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No. 11,511

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

SAM RICHARD SHOCKLEY and MIRAN EDGAR THOMPSON,	} <i>Appellants,</i>
VS.	
UNITED STATES OF AMERICA,	
	} <i>Appellee.</i>

BRIEF FOR APPELLEE.

JURISDICTIONAL STATEMENT.

There are two separate appeals involved in the above entitled cause. Sam Richard Shockley on December 24, 1946, filed a notice of appeal to this Court from a judgment of the United States District Court for the Northern District of California entered on December 21, 1946, adjudging him to be guilty of the crime of murder in the first degree and sentencing him to suffer the death penalty. (T. 89-96.) Miran Edgar Thompson on December 30, 1946, filed a notice of appeal to this Court from a judgment of the United States District Court for the Northern District of California entered on December 21, 1946, adjudging him to be guilty of the crime of murder in the first

degree and sentencing him to suffer the death penalty. (T. 91) (T. 121-125.)

The Grand Jury for the Southern Division of the United States District Court for the Northern District of California on June 19, 1946, returned an indictment against the Appellants and Clarence Victor Carnes charging them with having on the 2nd day of May, 1946, at the United States Penitentiary at Alcatraz Island, California, a place reserved for the exclusive use of the United States and under the exclusive jurisdiction thereof and within this Division and District, murdered William A. Miller, who was at said time an employee of the United States Penitentiary at Alcatraz Island, California, and engaged in the performance of his official duties. (T. 2-3.) On July 23, 1946, the defendants named in the foregoing indictment appeared in Court with their counsel, James E. Burns, and entered a plea of not guilty to the indictment. (T. 42.)

The United States District Court for the Southern Division of the Northern District of California had jurisdiction to try the defendants for this offense because William A. Miller, an employee of a United States Penal Institution, while engaged in the performance of his official duties, was murdered by the defendants at Alcatraz Island, California, a place reserved for the exclusive use of the United States and under the exclusive jurisdiction thereof and within this Division and District, on May 2, 1946. (T. 18 USCA, Sec. 253; T. 28 USCA, Sec. 41, Sub. 2; T. 18 USCA, Sec. 451, Sub. 3.)

The defendant, Clarence Victor Carnes, was convicted of murder in the first degree, without capital punishment, and is not appealing from the judgment rendered upon said verdict.

The United States Circuit Court of Appeals for the Ninth Circuit has jurisdiction to review the judgments in question upon the appeals taken by the above named appellants. (T. 28 USCA, Sec. 225.)

STATEMENT OF THE CASE.

On May 2, 1946, William A. Miller was senior officer or instructor, employed at the United States Penitentiary, Alcatraz Island, California. He was assigned at that time to duty on the ground floor of the main cell house. His duties kept him at the west end of the cell house most of the time. (T. 204-207.)

The main cell house is located in a building approximately 215 feet long, extending in an easterly and westerly direction. It contains three cell blocks. The first cell block "Block A" is on the northerly side of the main cell house and does not cover the entire length of the building. It is approximately 125 feet long. South of Cell Block A and parallel with it there is another cell block called "Cell Block B". This cell blocks extends the entire length of the main cell house and is 180 feet long. South of this cell block and parallel with it is another cell block "Cell Block C." This cell block extends the entire length of the main cell house. Each of the three cell blocks contains three

tiers, each tier being 8 feet in height. Between Cell Block B and Cell Block C there is an alleyway extending the entire length of the main cell building, approximately 14 feet in width and known as "Broadway." (T. 276-277.)

There is a southern wall of the main cell building which houses Cell Blocks A, B and C. It is a concrete wall extending from the floor to the ceiling, with the exception that in the corner of this wall there is a doorway leading into the prison library. On the south side of this concrete wall is located Cell Block D. There is a door passing through this concrete wall near its westerly end permitting entrance from the main cell house into Cell Block D (T. 277-278.) Cell Block D is known as the isolation section. It has cells on one side only, the northerly side. There are three tiers in the D Cell Block, each containing fourteen cells. The cells face towards the south side of the building. At the west end of the main cell house is a gun gallery extending across the entire west end of the cell house and D Cell Block. The lower level of this gun gallery is approximately 10 feet from the floor of the cell house and the floor of D Cell Block. There is no connection between the gun gallery and the floor of the main cell house and D Cell Block, except a post here and there for supporting purposes. The west gun gallery consists of two narrow walkways, one above the other, the first or lower being approximately ten feet from the floor of the cell house and the upper being approximately ten feet above the lower walkway. At the base of the walkway

is a steel sheet which varies from 39 to 41 inches in width. The west gun gallery in its entirety is approximately 125 feet long, of which ninety feet is in the main cell house area and 35 feet beyond the concrete wall and in the D Cell house area. The steel shield rises vertically from the floor of each walkway of the west gun gallery to form a protective shield about 39 inches above the flooring. Above the steel shield round bars rise vertically, the average distance between them being 5 to 5¼ inches. They rise and are supported by rectangular steel bars which furnish support and stability to them. The steel bars go from the lower level of the west gun gallery to the upper level of the west gun gallery, and when they approach a point approximately 7 feet from the floor of the west gun gallery, top level, they bend inward toward the west wall of the building in order to form a protective covering over the top of the gun gallery to prevent access into the gallery from above. Access to the west gun gallery is gained by a doorway from the outside of the prison buildings. It is near the southwest corner of the building. This door leads into a barred cage-like structure in which there is a ladder or steel stairway, giving access to the lower level of the west gun gallery from the main floor of the building. This is the only access to the lower gun gallery from the outside of the building. There is a double door leading into this cage-like structure, the outer door being a barred door, locked, and the inner door being a solid steel door with a glass aperture at about eye level. When you pass into this cage from the outside of the build-

ing, you are approximately 12 feet from the foot of the ladder. The ladder is to your right or to the south. On each level of the west gun gallery, there is a doorway at the place where the concrete wall, separating "D Block" from the main cell house would be, if it was extended across to the west end of the building. They are small doors made of a sound-proofing type of material, which are used to prevent drafts and noises from passing from one cell house to another. There is no lock on the doors. They are just swinging doors, swinging towards the D Cell House. The walkways in the west gun gallery on the lower and upper tiers vary in width from 39 inches to 41 inches. (T. 278-282.)

There is a gun gallery at the east end of the main cell house. It is constructed similar to the west gun galley, except that the west gun gallery has two short extensions about 30 or 35 feet long on the south wall of the D Cell Block area. There are no such extensions on the east gun gallery, which extends only across the main cell house and does not extend beyond the concrete wall over to the D Cell Block. (T. 282.)

There are two stairways leading from the lower tier of the west gun gallery to the upper tier. One is located at the southwest corner directly above the stairway which leads from the main level to the first tier. The other stairway is toward the northwest corner of the building and is about 20 feet from the northwest corner of the main cell house. At the west end of the main cell house there is a doorway leading

into the mess hall and kitchen. It is at the end of what is called "Broadway," namely, the passageway between the B Cell Block and C Cell Block in the main cell house. It leads to the dining-room and kitchen and the doorway and stairway to the hospital are in that area. (T. 283.) The hospital is located on the second floor of the portion of the building which serves as the dining-hall and kitchen. The dining-hall and kitchen are on the same level as the cell house. At the northwest corner of the main cell house there is a doorway leading to the basement. It is covered with a grille and bar-work extending up to and near the floor of the west gun gallery. In the basement, which is underneath the main cell house, there is a barber shop and shower room and clothing room and a music-practice room. At the east end of the main cell house there is a door leading from the administrative offices into the main cell house. (T. 283-284.)

On May 2, 1946, at 1:30 P. M., William A. Miller, the decedent, was on duty at the west end of the main cell house. Ernest B. Lageson was also a Guard on duty in the main cell house. At that time, Guard Lageson left the main cell house. The only inmate out of his cell in the main cell house at that time was Bernard Coy, whose cell was in B Block. He was a magazine orderly and, as such, it was his duty to pick up the magazines in the morning that were left in the cell bars and to re-arrange them in their regular magazine routes and to re-deliver them to the inmates for an evening reading. There were approximately fifty inmates in their cells in the main cell block at that

time. One of the inmates was Clarence Victor Carnes, who was celled in B Block. Inmate, Miran Edgar Thompson, was celled in C Block, in the main cell house at that time. Inmate, Joseph Paul Cretzer, was celled in C Block. Inmate, Sam Shockley, was celled in D Block. Guard Lageson left the main cell house at that time, leaving Miller, the only guard in the main cell house. (T. 613-614-615.) At 2:15 P. M. on that day Robert C. Bristow, employed as culinary supervisor in the Alcatraz Penitentiary, entered the east end of the main cell house from the front office and started down the corridor known as "Broadway," between B and C Blocks, toward the kitchen. When he arrived near the gate leading into the dining room, at the west end of the main cell house, he saw an officer's trousers and some keys lying on the floor. He stepped back and looked up into the west gun gallery and saw inmate, Coy, waving his arm over the side of the gun gallery. On his right, between the end of B Block and the stairs going down to the shower room was Inmate Carnes, and on top of the stairway leading down to the shower room was Inmate Hubbard. Inmate Hubbard was employed in the kitchen which is immediately west of the main cell block. (T. 618, T. 709.) Carnes moved over to the witness, Bristow, and told him to stand over out of sight of anybody who happened to be up around the other end of Broadway by the end of C Block, and then Carnes moved him away from the telephone, putting his arm around him. Carnes had a sharp instrument in his hand and put it against Bristow's

throat. Carnes said "Move over here." Bristow moved over between the end of C Block and the gun gallery out of sight of Broadway. After he moved over, he saw Inmate Coy pass a gun down to Hubbard and Coy hollered down to Carnes to put Bristow in the cell. Carnes, still holding the instrument in his hand, placed Bristow in the end cell of C Block, normally used as an officers' toilet, being cell No. 404. When Bristow got into the cell, Guard William A. Miller and two inmates, Moyle and Egan, were already in the cell. Miller was just standing inside the cell. He had on his shirt and his underwear. His hands were tied behind him. Shortly after Bristow was put in the cell, Custodial Officer Burdett, who had been stationed in the kitchen, was also put in the cell; then Guard Corwin, who was stationed in D Block was put in the cell; then Guard Lageson was put in the cell. Bristow recognized Inmates Coy, Cretzer, Shockley and Carnes outside the cell when these different men were put in it. Hubbard was running up, back and forth in front of the cell, with a rifle in his hand. Cretzer had a .45 automatic in his hand. After Carnes put Bristow in the cell, he took an officer's club. He was walking back and forth in front of the cell. Coy tried to lock the door of the cell after he had them all in there. Cretzer asked Lageson what key opened the outside gate leading into the yard, but Lageson would not tell him. He said he did not know which one. Inmates Moyle and Egan asked Cretzer and Coy to remove them to another cell and they moved them toward the east end of C Block. Coy,

Cretzer and Shockley then moved the guards into the next cell; that would be 403. Shortly after they moved the guards into that cell, Captain Weinhold was brought into the cell. (T. 474-486.) As Captain Weinhold was being placed in the cell, Shockley struck at him with his fist. (T. 1052.)

Subsequently, in the neighborhood of 2:15 or 2:20 P. M., Joseph H. Simpson, lieutenant of the custodial force of the Alcatraz Penitentiary, entered the east end of the main cell house and proceeded toward the west end of Broadway. He was seized by Defendant Thompson, who was armed with a rifle, by Cretzer who was armed with a .45 automatic pistol, and by Shockley who had a wrench or club in his hand. Robert Baker, the mail censor at the penitentiary, was with Simpson. Thompson, Carnes, Cretzer, Shockley and Coy took Guards Simpson and Baker to the south side of C Block and placed them in the third cell, No. 402. (T. 784-788.) Later, Carl W. Sundstrum, the record clerk of the penitentiary, was put in that cell by Shockley and Cretzer. Cretzer had a .45 automatic and Shockley had a wrench or club in his hand. As Guard Sundstrum came up to the door of the cell, Shockley hit him a few times in the face with his fist. Sundstrum was compelled to take his trousers off; a billfold fell out of his pocket and Cretzer asked for it and took the money out of the billfold. (T. 790.)

Burt A. Burch was on May 2, 1946, a custodial officer, assigned to the west gun gallery from 8:00 A. M. to 4:00 P. M. He was armed with a .3006 Springfield rifle with fifty rounds of ammunition and

a .45 caliber Colt automatic. He also had in his possession certain keys to doors in the cell blocks. (T. 406-407.) At about 2:00 o'clock he was in D Block section of the west gun gallery, on the lower tier. He walked in a northerly direction toward the wooden door which separates the D Block from the C Block in the gun gallery. As he approached the door, it was violently swung toward him. Inmate Coy, dressed in his underwear, jumped through the door and attacked Burch, knocking him down and beating him about the head and grabbing the rifle. Burch was knocked unconscious by Coy. (T. 408-411.) This was on the D Block side of the lower tier of the west gun gallery. Coy had entered the west gun gallery by spreading the bars that extended over the top of the gallery at its northerly extension at the end of the main cell block. For that purpose, he had used plungers from the toilet fixtures, which were later found on the floor of the gun gallery beneath the bent bars. When Burch revived consciousness, he was in the cell house side of the lower tier of the west gun gallery, ten or twelve feet beyond the door where he had been struck. His hands were tied behind him with his necktie. He was tied to an electric conduit pipe which comes out of the wall probably four feet up and extends down the wall. He was tied to that conduit pipe with a cord around his neck. He was alone in the gun gallery and his rifle, pistol and ammunition were gone. (T. 411-413.) He had on his underwear and shirt. His uniform and shoes were gone. Coy was gone. The keys were also gone. On the evening of May 2, 1946, other

guards succeeded in getting into the west gun gallery through the door from outside the building and found Burch in the gallery. Burch was then in the main cell house side of the west gun gallery. (T. 421.) He was relieved from the gun gallery on the following night, Friday, May 3, 1946, between nine and ten o'clock. At the time he was knocked unconscious by Coy, his rifle was loaded in the magazine with five cartridges. Besides those five cartridges, he had forty-five others, making a total of fifty rounds of ammunition. (T. 427.) At the time he was knocked unconscious by Coy, he had also a Colt automatic pistol, having one shell in the barrel and six in the clip. In addition to that, he had two fully loaded clips containing seven shells each. (T. 428.)

While Guards Miller, Burdett, Corwin, Bristow and Lageson were in the second cell, No. 403, Thompson, Shockley, Cretzer, Carnes, Hubbard and Coy were outside the cell. Cretzer asked Guard Miller for his keys and Miller gave him a ring of keys. The inmates named then went over to the door, leading into the outside courtyard and tried to get out. Key No. 107, which opened that door, had been given to Burdett by Guard Miller, when they were in the first cell or the officers' toilet and Burdett put it on the floor near the wall under a bench in Cell No. 404. The inmates came back to the second cell a number of times, and Coy asked what key opened the door, leading to the yard, and Miller told him, 107. The inmates were all looking for the 107 key. (T. 722-723-724.) At about this time, the prison siren went off. Inmates Cretzer, Carnes,

Thompson and Shockley were outside the cell where the guards named, with Captain Weinhold, were then confined. Cretzer had a .45 automatic, Carnes had a club and Shockley had no weapon at this time. Captain Weinhold spoke to Cretzer saying: "Cretzer, tell your boys not to go outside; if they do they will get hurt." Cretzer replied, "You mean they will get killed, don't you?" Shockley said, "We are going to kill all of you; kill all the sons of bitches." Then Thompson spoke up and said, "Yes, we want no living witnesses." Cretzer was speaking to Captain Weinhold. He said, "You are going to be the first one to die, the first son of a bitch to die," and then he shot him. He then shot Corwin and Miller. Bristow was not hit, but fell to the floor. Lageson and Burdett were sitting on the bed at the side of the cell. Cretzer shot at Lageson and Lageson fell over. Cretzer fired one shot at Burdett and missed. They all fell to the floor and played dead. (T. 488-490.) Then Cretzer went to the next cell, the third cell, which was No. 402, in which Guards Sundstrum, Baker and Simpson had been placed. Cretzer fired a number of shots into that cell, wounding Baker and Simpson. Cretzer then came back to the second cell, No. 403. Shockley looked into this cell and he saw Lageson sitting on the toilet seat in the cell and said, "There's one son of a bitch that hasn't even been hurt." Cretzer brought up his .45 to shoot Lageson and the gun snapped; it was empty, so he released that clip and inserted another clip and said, "I am sorry, Mr. Lageson," and fired. As he fired, Lageson fell forward on Burdett on the bed and pre-

tended that he had been struck. The bullet grazed his face. (T. 724-727.) Inmates Cretzer, Carnes, Thompson and Shockley then walked away from the cell toward the end of the cell block, west. (T. 727, T. 549-551, T. 627-630, T. 792-793, T. 842, T. 885-886-887, T. 1055-1056-1057.)

The guards were rescued from the cells in which they had been placed by the inmates late in the night of May 2, 1946. Guard William A. Miller died at the Marine Hospital, San Francisco, on the following morning. The officials of the prison succeeded, early in the evening of May 2, 1946, in getting guards into the west gun gallery through the outside door at the southwest corner of the building. A number of guards were wounded while making their way up the stairway to the lower tier of the gun gallery. Guard Harold Stites was killed while in the west gun gallery. When the prison officials succeeded in getting control of the corridors of the main cell block and of D Block, by controlling the east and west gun galleries, Inmates Cretzer, Coy and Hubbard took refuge in the utility corridor between the northerly and southerly tiers of cells of C Block. They were killed in this corridor and their dead bodies were found on the morning of Saturday, May 4, 1946.

ARGUMENT.

**(a) ADDRESSED TO THE POINTS RAISED BY APPELLANT,
SAM RICHARD SHOCKLEY.**

I.

The motions of the defendants to dismiss the indictment were properly denied.

On July 9, 1946, defendants, Sam Richard Shockley and Miran Edgar Thompson, through their attorney, James E. Burns, filed in the United States District Court a motion that the indictment returned against the defendants be dismissed on the following grounds:

(1) The indictment was founded and returned upon illegal and incompetent evidence only and that no competent evidence was submitted to the Grand Jury establishing the commission of the offense set forth in said indictment or any lesser offense included therein.

(2) The indictment is duplicitous in that it charges in one count two distinct and separate offenses, to-wit: The murder in the first degree of a federal officer in violation of Title 18, U.S.C.A., Section 253, and in the same count a charge of murder in the first degree at or on a place reserved for the exclusive use of the United States and under the exclusive jurisdiction thereof in violation of Title 18, U.S.C.A., Sections 451 and 452. (T. 20.)

The Government filed an opposition to this motion to dismiss. (T. 27-28.) James E. Burns submitted an affidavit, executed by himself, in support of the motion. (T. 21-27.) A counter-affidavit by Frank J.

Hennessy in opposition to the granting of the motion was filed on July 16, 1946. (T. 29.) An examination of the affidavits will show that no grounds were offered in support of the motion as to the first paragraph of the motion to dismiss, namely, that illegal and incompetent evidence only and no competent evidence was submitted to the Grand Jury. No reporter was present at the session of the Grand Jury at which the indictment was returned and no transcript of the evidence was taken at that session of the Grand Jury. (T. 29.)

As to the second paragraph of the motion to dismiss, the defendants are charged in the indictment with a single offense, namely, that on the 2nd day of May, 1946, at the United States Penitentiary at Alcatraz Island, California, they murdered William A. Miller, an employee of a United States Penal Institution at Alcatraz Island, California, while engaged in the performance of his official duties as such custodial officer. (T. 2-3.) These allegations constituted a murder committed in violation of Title 18, U.S.C.A., Section 253. There is but a single offense charged, namely, the killing of a federal officer. The fact that the killing took place at Alcatraz Island, a place reserved for the exclusive use of the United States and under the exclusive jurisdiction thereof, does not in any way make the indictment duplicitous. The ruling of the trial Court denying the motion to dismiss the indictment was therefore properly made.

II.

The motions of the defendants for a separate trial were properly denied.

On July 9, 1946, the defendants filed a motion for a severance for purpose of trial through their attorney, James E. Burns. (T. 6-7.) Opposition to this motion was filed by the Government. (T. 37.) James E. Burns, the attorney for the defendants, filed an affidavit in support of this motion and Frank J. Hennessy filed an affidavit in opposition to the granting of it. On July 18, 1946, A. F. St. Sure, United States District Judge, denied the motions of the defendants for a severance for purpose of trial. (T. 41.)

On September 7, 1946, James E. Burns, as attorney for defendants Sam Richard Shockley and Clarence Victor Carnes, made another motion that they be granted a trial separate and apart from their co-defendant, Miran Edgar Thompson. This motion was supported by an affidavit of James E. Burns. (T. 43-47.) An opposition to the granting of the motion was filed by the Government on September 11, 1946. This opposition was supported by the affidavit of Frank J. Hennessy. (T. 51-55.) On September 12, 1946, United States District Judge Louis E. Goodman denied this motion. (T. 55-56.)

The orders of the District Court denying the motion for a severance were properly made.

Rule 8 (b) of the Rules of Criminal Procedure provides:

“Joinder of Defendants. Two or more defendants may be charged in the same indictment or in-

formation if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

Rule 14 of the Rules of Criminal Procedure provides:

"Relief from Prejudicial Joinder. If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants to an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires."

The granting or denial of a severance or separate trial to defendants jointly indicted rests in the discretion of the trial Court, which in the absence of good cause therefor, may in the exercise of its discretion properly refuse separate trials and whose grant or denial of a separate trial or severance will be upheld in the absence of an abuse of discretion, clearly shown.

Latses v. U. S., C.C.A. Utah, 45 Fed. (2d) 949;

Cochran v. U.S., C.C.A. Minn., 41 Fed. (2d)

193;

Raarup v. U. S., C.C.A. La., 23 Fed. (2d) 547

(cert. denied).

There is no showing in this case that there was an abuse of discretion in the denial of the motions of the

defendants for a severance. The record in the case shows that the defendants suffered no prejudice through the failure of the Court to grant them separate trials.

III.

The motions of the defendants for a change of venue were properly denied.

On July 9, 1946, James E. Burns, as attorney for defendants Sam Richard Shockley and Miran Edgar Thompson, moved the United States District Court to transfer the proceedings pending before it from the Northern District of California on the ground there existed in said District and Division so great a prejudice against the defendants that they could not obtain a fair and impartial trial in that Division and District (T. 10-11.) The motion was supported by an affidavit of James E. Burns, attorney for said defendants. (T. 12-16.) An opposition was filed by the Government to this motion to transfer the cause for trial. (T. 30.) This opposition was supported by the affidavit of Frank J. Hennessy. (T. 31-37.) The motions for transfer for trial were denied by District Judge A. F. St. Sure on July 18, 1946. (T. 41.)

The ruling of the trial Court in denying these motions for a transfer of the cause from the District for trial was properly made.

Rule 21 of the Rules of Criminal Procedure provides:

“Transfer from the District or Division for Trial.

(a) For prejudice in the District or Division. The court upon motion of the defendant shall transfer the proceeding as to him to another district or division if the court is satisfied that there exists in the district or division where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that district or division.”

An application for a change of venue on the grounds of prejudice is by the foregoing rule addressed to the sound discretion of the trial Court.

U. S. v. Parker, C.C.A. N.J., 103 Fed. (2d) 857 (cert. denied);

U. S. v. Beadon, C.C.A. N.Y., 49 Fed. (2d) 164 (cert. denied);

Younge v. U. S., W. Va., 242 Fed. 788 (cert. denied);

U. S. v. Stroud, Kans., 251 U. S. 15.

The venue of a criminal prosecution is fixed by law and the Court has no power to change the venue, except on a proper showing and in strict conformity with the statute.

Hale v. U. S., C.C.A. Okl., 25 Fed. (2d) 430.

Section 101, Title 28, U.S.C.A., provides as follows:

“Capital cases—The trial of offenses punishable with death shall be had in the County where the offense was committed, where that can be done without great inconvenience.”

“If newspaper articles furnished grounds for removal, no defendant could ever be tried in this County for a spectacular crime.”

People v. Brindell, 185 N.Y.S. 583, 194 App. Div. 776, 39 N. Y. Cr. 52.

“The test is whether there can be secured with reasonable certainty from the citizens of the parish and under the safeguards of the law, a jury whose members will be able to try the case on the law and the evidence, uninfluenced by what they may have heard of the matter and who will give the accused the full benefit of any reasonable doubt which may arise from the evidence or lack of evidence.”

State v. Rini, 95 So. 400, 153 La. 57;

Error dis—Rini v. State of La., 263 U. S. 689.

“The fact that a murder case has excited public interest and has been discussed more or less is not ground for a change of venue.”

State v. Rini, *supra*.

“Newspaper articles with reference to the crime, even when denunciatory of accused, are not in themselves sufficient to show prejudice, unless they so arouse public hostility as to preclude a fair trial.”

22 C.J.S. 196.

There was no showing made in support of the motions of the existence in the Southern Division of the Northern District of California of a bias or prejudice against the defendants, rendering it improbable that they could, in this division and district, obtain a

fair and impartial trial. The mere fact that considerable publicity had been given both in the press and through the radio to the incidents resulting in the death of William A. Miller was not sufficient to justify the transfer of the cause. There was no showing that a fair and impartial jury could not be obtained in this division and district to try the defendants. The same publicity that had been given to the events in this district undoubtedly obtained throughout the entire United States. An examination of the transcript in this case will show an absence on the part of the jury of any prejudice or bias against the defendants. The defendants were given a full opportunity to examine the prospective jurors upon their *voir dire* and apparently were satisfied with the jurors selected.

IV.

The verdict of guilty is sustained by the evidence.

The evidence in this case shows that on May 2, 1946, a conspiracy existed among a number of the inmates of the federal penitentiary on Alcatraz Island to escape from that institution; that the defendant, Shockley, became a member of that conspiracy and participated in it; that, in the course of the conspiracy and in furtherance of the common plan, Cretzer shot and killed Guard William A. Miller. In law, the act of Cretzer was the act of all who were members of the conspiracy at that time, and evidence of the conspiracy was admissible although the conspiracy was not charged in the indictment.

“Although conspiracy be not charged, if it be shown by the evidence to exist, the act of one or more defendants in furtherance of the common plan, is in law the act of all.”

Davis v. U. S. (5th Cir.) 12 Fed. (2d) 253
(Cert. denied).

The conspiracy to escape contemplated what was done by Cretzer. It was part of the plan of the conspirators to seize the guns and ammunition of the guard in the west gun gallery, to overcome Guard Miller and the other guards in the cell blocks, and take their keys and release their co-conspirators from cells in which they were incarcerated, and arm themselves and use all necessary force, even to the extent of slaying in order to subdue the guards and escape from the penitentiary. The fact that the conspirators armed themselves with a rifle and a pistol and with clubs and wrenches and knives and daggers shows that they contemplated overcoming the resistance of the guards by murder, if necessary, in order to obtain their objective.

“The governing principle is the same when the substantive offense is committed by one of the conspirators in furtherance of the unlawful project. *Johnson v. United States*, 62 F. 2d 32, 34. The criminal intent to do the act is established by the formation of the conspiracy. Each conspirator instigated the commission of the crime. The unlawful agreement contemplated precisely what was done. It was formed for the purpose. The act done was in execution of the enterprise. The rule which holds responsible one who counsels, procures, or commands another to commit a crime

is founded on the same principle. That principle is recognized in the law of conspiracy when the overt act of one partner in crime is attributable to all."

Pinkerton v. U. S., 328 U. S. 647.

The evidence clearly shows that not only was Shockley a member of a criminal conspiracy to escape at the time of the shooting of Guard Miller, but it also establishes that he was present at the shooting and aided and abetted and counseled Cretzer in the killing of Miller. As such, he was chargeable as a principal in the commission of the offense.

Greenberg v. U. S. (C.C.A. Mo.) 297 Fed. 45;

Parisi v. U. S. (C.C.A. N. Y.) 279 Fed. 253.

"Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission is a principal."

18 U.S.C.A. Sec. 550.

The defendant, Shockley, at the time of the break on May 2, 1946, was celled in D Block, which is the isolation section of the cell house. (T. 945.)

Cretzer, armed with a pistol, Hubbard, armed with a rifle, and Carnes armed with a club compelled Guard Corwin, who was on the floor of D Block to open the door leading from the main cell house into D Block. (T. 538.) They then entered D Block and succeeded in opening the cell doors on the two upper tiers of D Block. They were unable to open the doors of the cells on the ground floor of D Block because the mech-

anism used to open these doors was operated from the gun gallery. Shockley and other inmates of D Block were released from their cells. Shockley entered the main cell house from D Block. He joined the other inmates who were outside the cells where guards were confined. (T. 480-482; T. 549.) He assisted Coy and Cretzer in moving the guards from the end cell, 404, to the next cell, 403. (T. 485.) With Cretzer and Coy he assisted in putting Lieutenant Joseph H. Simpson and Robert R. Baker, the mail censor, in the third cell. (T. 487.) A little later he joined Coy and Cretzer in putting Sundstrum, the record clerk, in the same cell. (T. 516.) As Sundstrum was being put in the cell, Shockley looked at him and said, "You son-of-a-bitch," and hit him on the chin twice. (T. 882-883.) He also participated with Inmate Hubbard, who was armed with a rifle, and Inmate Carnes, who was armed with a wooden police club, in seizing Captain Henry W. Weinhold in the main cell house and in placing him in a cell. (T. 1050.) Weinhold was placed first in the end cell on the north end of B Block. His uniform coat and trousers were taken from him. Carnes, armed with a club, remained outside the cell. (T. 1051.) Weinhold was later removed from the cell in B Block and brought over by Carnes to the end of C Block. As he turned the corner of the cell block, he observed Cretzer and Shockley standing on the C Block side and they came and met him. Shockley struck at Captain Weinhold with his fist. Weinhold dodged him. Weinhold took a couple of more steps and Shockley struck at him again and hit him on the

back of the neck. (T. 1052-1053.) Cretzer, Shockley and Carnes then took Weinhold into the end cell, being the officers' toilet in C Block. He was then moved into the next cell. Shockley and Cretzer were standing there as he entered this cell. Cretzer had the .45 in his hand; Shockley was standing slightly behind his left side, slightly in back of him on the left side.

Captain Weinhold testified as follows:

"I started talking to Cretzer, telling him what a fool he was, what little chance he had of making a go of it.

Q. State what was said.

A. Well, I said to him, I said, 'You know you can't make a go of this.' He said, 'If we can get outside we can make it.' I said, 'No, even if you got outside, everyone would be killed.' He said, 'Well, we will kill a couple of you going out.' I said, 'That may be true, but I'll tell you, you are not going to get away with it. You know nobody does; you can't get away with anything on Alcatraz.' I said, 'The best thing for you to do is give me that gun and call this thing off.' I said, 'You will be done for and we will be done for, and everybody will be done for.' All the time I was talking to Cretzer, Shockley was standing in back of him, kept up a constant chatter, 'Kill the bastards, go on, kill the dirty God damned bastards, kill them, kill all of them, they're no damned good, let's kill them all.' He kept it up and he kept it up. I kept talking to Cretzer. Cretzer said, 'Well, we are going to kill all of you.' I said, 'That won't mean anything, you aren't going to die but once. The best thing for you

to do is give me the gun.' About that time the siren blew. When the siren blew Shockley said, 'There it is, go ahead, shoot him.' Cretzer pulled the trigger. I felt a shock here in my chest. Everything went a little hazy. My knees melted away from under me, and I lost interest in the proceedings for a while.

Q. Did you become unconscious?

A. Well, I think I did; at least, everything was hazy to me for a while. I can remember different instances—

Mr. Spagnoli. Just a minute. We object to any voluntary testimony.

The Court. He has been asked to state what occurred.

Mr. Hennessy. What is the first thing you recollect after the shooting?

A. Finding myself lying on the floor with my head in Corwin's lap; rather, on his knees and being aware that I had been injured. While I was lying there in that position I noticed three inmates tiptoe past the cell going toward the east end.

Q. Did you see the inmates?

A. Yes.

Q. Did you recognize them?

A. The first inmate going by the cell was Thompson, who had a rifle. The next one who went by was Shockley; I couldn't see whether he had anything in his hand, or not. He was followed by Cretzer, who still had the .45. They had only been gone past the cell a matter of moments when they came running back as fast as they could run; they came back past the cell and went to the west end.

Q. Towards the west end?

A. Yes. The next thing I recollect was being terribly cold and asking for someone to put a blanket over me. I don't remember seeing any other inmate from that time on." (T. 1054-1057.)

Robert C. Bristow, culinary supervisor or cook at Alcatraz Penitentiary, was the first officer to enter the main cell house after the seizure of Guard Miller. He entered from the front office at about 2:15 P. M. and went down Broadway. He was seized by Inmate Carnes, who held a sharp instrument at his throat and put him in the officers' toilet or end cell, No. 404, in C Block. (T. 476-477.) Shockley was present when a conversation occurred between Cretzer and Lageson as to what key opened the outside gate leading into the yard. (T. 482.) Shockley was also present with Coy and Cretzer when the guards were moved from the first cell to the officers' toilet in the second cell, or No. 403, of C Block. (T. 485.) Shockley, Cretzer and Coy put Lieutenant Simpson and Mail Censor Baker in the third cell, or Cell 402. (T. 487.)

In regard to the shooting, Culinary Officer Bristow's testimony is as follows:

"Q. You were in this No. 2 cell when the siren went off?

A. Yes.

Q. What happened after the siren went off?

A. Immediately after the siren went off Cretzer and Shockley came up in front of our cell and Captain Weinhold started to talk to Cretzer, told him not

to go outside into the yard, he thought they had the key.

Q. State what the conversation was, between Weinhold and Cretzer.

Mr. Spagnoli. We object on the ground it is hearsay.

Mr. Zamlock. We object on behalf of Carnes.

Mr. Hennessy. We submit it is part of the conspiracy.

Mr. Spagnoli. We object to the introduction of it until the corpus delicti is proven, until they establish the conspiracy.

Mr. Hennessy. We are establishing it step by step.

The Court. I will overrule the objection.

The Witness. A. Captain Weinhold said, told Cretzer, he said, 'Don't you boys go out into the yard, you are going to get hurt.' So Cretzer said, 'There is going to be a lot of guys get hurt before this is over, there will be lots of guys killed.' Shortly after that Shockley and Cretzer came over to the cell. Cretzer said to Captain Weinhold, 'You are going to be the first son-of-a-bitch to die.' He shot Captain Weinhold. Then he shot, emptied the clip right in the cell and Mr. Corwin got hit, and Mr. Miller got hit.

Mr. Sullivan. Just a second. If I understand correctly, these shots were fired into the cell next to the one you were in?

Mr. Hennessy. No.

The Witness. No. He shot into our cell. Captain Weinhold was the first one fired on.

Q. Who fired the shot?

A. Cretzer.

Q. Where was Shockley?

A. Standing right beside him.

Q. Did he participate in the conversation at all?

A. Told Cretzer to kill all the son-of-bitches, they was all sons-of-bitches.

Q. Who said that?

A. Shockley.

Q. Did Shockley have any weapon or instrument in his hand?

A. No.

Q. Tell us then what happened after Cretzer fired into the cell in which you were a prisoner?

A. After he fired into our cell then he stepped to the door and fired in there at those three fellows.

Q. What did you do after he fired into your cell?

A. I fell to the floor.

Q. He didn't hit you?

A. No.

Q. Was Bristow hit?

A. I am Bristow.

Q. Was Lageson hit?

A. No, not at that time, he was not hit.

Q. Was Corwin hit?

A. Yes.

Q. Where was he hit?

A. The bullet went in one side of his face and came out the other.

Q. Was Miller hit?

A. Miller was shot in the arm, here, somewhere, in the side.

Q. Was Captain Weinhold hit?

A. Captain Weinhold was shot through the arm and here on his right side.

Q. Was Burdett hit?

A. No.

Q. What did the men in the cell do after the shooting?

A. We all fell to the floor and played dead.

Q. After Cretzer had gone, after he had fired some shots in there, what happened?

A. After they fired in there they then came back after a while.

Q. Who came back?

A. Shockley and Cretzer.

Q. What happened?

A. Well, Cretzer was leading, and he walked past the cell and Shockley was right behind him. He looked into the cell and said, 'Here is a son-of-a-bitch in here that ain't been shot.' Cretzer started back and said, 'That's Mr. Lageson.' He said, 'He's my friend.' 'Friend, hell,' he said, 'he will go over to the Court and squawk just as loud; shoot the son-of-a-bitch.'

Q. Who said that?

A. Shockley.

Q. Do you see Shockley here?

A. Yes.

Q. Point him out.

A. The man sitting right over there, kind of bald-headed.

Mr. Hennessy. Will it be stipulated he points to the defendant Shockley, Mr. Sullivan?

Mr. Sullivan. Yes, I will stipulate.

Mr. Hennessy. Q. Then what happened?

A. Well, he starts shooting Mr. Lageson and the clip was empty. So he took the clip out, dropped it on the floor, put in another clip and told Mr. Lageson, 'I am sorry,' and he shot him.

Q. Did he hit Lageson?

A. Just hit the edge of his ear.

Q. What did Lageson do?

A. He fell over.

Q. Where were you after the second shooting?

A. I was kneeling at the end of the bunk, there.

Q. Were you on the floor?

A. I was down on my knees, yes, just leaning on the edge of the bunk.

Q. Did you remain in that position for some time?

A. No. Mr. Corwin fell over on my legs so I had to move my legs and stretch out.

Q. Did you remain on the cell floor for a considerable period?

A. Yes, until about 11:30 that night.

Q. Did the other guards who were in the cell with you keep on the floor, or stretched out on the bed?

A. Yes, in their positions. They remained there until we were rescued.

Q. Did you see any inmates out in the corridor about your cell?

A. No.

Mr. Zamlock. I ask the time be fixed.

Mr. Hennessy. After the shooting.

A. Yes, I could see them going back and forth in front of the cell.

Q. Did you recognize any of them?

A. At that time I was down below and all I could see was their feet, and up to their knees.

Q. Did you hear any conversation between them?

A. I heard a couple of them.

Mr. Zamlock. Just a minute. That is objected to as hearsay. It must be established that they were members of the conspiracy.

Mr. Hennessy. I will withdraw it.

Mr. Spagnoli. We object to it as hearsay.

The Court. It is withdrawn.

Mr. Hennessy. Q. What time were you removed from that cell, Mr. Bristow?

A. It was around eleven thirty Thursday night.

Q. Thursday night?

A. Yes." (T. 488-492.)

Guard Cecil D. Corwin, who was on the floor of D Block and was seized by Cretzer, Hubbard and Carnes, was first placed in the officers' toilet, namely, Cell 404, where Guard Miller and other guards were confined. Together with them he was later moved to the second cell, or Cell 403. (T. 546-547.) He was in this cell when Guard Miller, Captain Weinhold and Guard Corwin were shot. He testified to the conversation between Cretzer and Captain Weinhold. He testified that Hubbard, Carnes, Shockley and Thompson were outside the cell at the time of this conversation. (T. 549.)

Cecil D. Corwin's testimony as to the shooting is as follows:

"Q. Tell us just what happened then. Did Shockley have anything in his hands at that time?

A. No, sir.

Q. Did Carnes?

A. I don't know whether Carnes still had the club or not. I don't remember.

Q. Did Cretzer?

A. Cretzer had the .45.

Q. Did Hubbard?

A. Hubbard had the rifle.

Q. Tell us just what happened.

A. Captain Weinhold, after the siren blew, said, 'You don't have a chance now.' He said, 'You would be foolish to go outside. You will be killed.'

Cretzer said, 'If we can't go, if we are going to be killed, we are going to kill you, too,' standing there with the pistol pointed at us.

Q. Did any of the other inmates participate in the conversation?

A. Shockley did.

Q. What did Shockley say, if anything?

A. He said, 'Kill every one of the yellow-bellied bastards. We won't have any testimony against us.'

Q. Proceed and tell us what happened.

A. The Captain said—Cretzer said, 'If we are going to die, you are going to die, too.'

Captain Weinhold said, 'We can die only once.'

Cretzer said, 'Go ahead and die, you son of a bitch,' and pulled the trigger. Then he shot me.

Q. Did you know how many shots were fired into the cell?

A. I couldn't say. I was the second one fired on. I went down.

Q. Where were you shot?

A. Shot underneath this eye here and came out here.

Q. Is the vision of your left eye impaired, Mr. Corwin?

A. It is.

Q. When you were shot, did you become unconscious?

A. I don't think so. I seem to remember what went on, but I was on the floor on my face. I couldn't see anything. I heard, but I didn't see.

Q. Were you bleeding?

A. Yes, sir.

Q. What did you hear?

A. I heard him say—I don't know who said this, because I didn't see—he said, 'That man back there—there is a man back there that ain't been shot yet,' he said. And that was Mr. Lageson.

Q. That voice came from outside the cell?

Mr. Zamlock. I object to that on the ground it calls for the opinion and conclusion of the witness.

Mr. Hennessy. He is stating what he heard.

Mr. Zamlock. He added something. It is only the latter part of the statement I am objecting to.

The Court. The witness said the man in front said, 'There is a man who hasn't been shot.' The wit-

ness said he meant something to the effect that was Mr. Lageson.

Mr. Hennessy. I thought that was part of the conversation. It may go out.

The Witness. Mr. Lageson responded at once. That is why I presumed it was him.

Mr. Hennessy. Q. Tell us what you heard, not your conclusions.

A. All right.

The Court. Q. You said that someone said, 'There is a man who hasn't been shot.' And then you said Mr. Lageson responded, and then someone interrupted.

The Witness. He did. Mr. Lageson responded and said, 'Take it easy, Joe,'—that was Cretzer's first name. Cretzer said, 'I'm sorry, Mr. Lageson,' and pulled the trigger.

Mr. Hennessy. Q. At that time you were lying wounded on the floor?

A. That is right.

Q. Do you recollect anything else that happened at or about that time, Mr. Corwin?

A. Well, it was a sort of series of commotion, shots fired. I don't know at whom they were fired.

Q. Were you able to see or did you see any inmates outside the cell during the afternoon after you were shot?

A. I did not, no, sir.

Q. You were on the floor of the cell?

A. On the floor, yes, sir.

Q. Were you able to see outside the cell from where you were lying?

A. No, sir. I had this left eye—that was on the side the cell door would be on—that was blinded with blood.

Q. And you remained in that cell until what time?

A. It was after eleven. I don't know what time it was.

Q. On that same evening?

A. The same evening.

Q. Thursday night?

A. That is right.

Q. Then you were taken out with the other guards, is that correct?

A. Yes, sir." (T. 549-552.)

Guard Ernest B. Lageson entered the main cell house through the east end approximately ten minutes after two on the afternoon of May 2, 1946. He was seized by inmates Coy, Hubbard, Cretzer and Carnes. He was placed in the first cell, or the officers' toilet in C Block. Guard Miller and Steward Bristow were already in the cell. Guard Miller's thumbs were tied together behind his back. (T. 618-620.) Later Guards Lageson, Miller, Bristow, Burdett and Corwin were placed in the second cell, or Cell 403. Captain Weinhold was later placed in the same cell. Mail Censor Baker and Lieutenant Simpson, and Record Clerk Sundstrum were brought in and placed in the third cell, Cell 402. As Sundstrum was brought in Coy had him by the necktie and Shockley slapped him at least twice on the side of the face. (T. 624.) Cretzer

came to the front of the cell and asked which key opened the door to the yard. Mr. Miller said "107." At the time of this conversation between Cretzer and Guard Miller, Inmate Carnes was there and Inmate Shockley was there. (T. 625.) Carnes stationed himself in front of the cell with a club. Cretzer was there with the .45 and Shockley was making his way back and forth in front of the cells with a monkey wrench in his hand. (T. 626.)

Guard Lageson's testimony as to the shooting was as follows:

"Mr. Hennessy. Q. Then what happened, Mr. Lageson?

A. At that time Mr. Weinhold began to talk to Cretzer, trying to persuade him to give up the affair.

Q. Now, let's see. Who were present at this time?

A. Carnes, Shockley, Thompson and Cretzer.

Q. Where was Cretzer?

A. Cretzer was immediately in front of our cell.

Q. In front of Cell 403?

A. Yes, sir.

Q. Did he have anything in his hand?

A. He had the .45 automatic.

Q. Where was Shockley?

A. Shockley was behind him.

Q. Did he have anything in his hand?

A. I don't know whether he still had the wrench or not.

Q. Where was Carnes?

A. Carnes was standing in behind him and to the side of Cretzer.

Q. Did he have anything in his hand?

A. He still had the club.

Q. Where was Thompson?

A. Thompson was standing behind Cretzer, in back of him.

Q. Were the four men close together or was there quite a bit of space between them?

A. They were all fairly close together.

Q. Were they visible from where you were in Cell 403?

A. Yes, sir, they walked back and forth.

Q. Had the alarm gone off yet?

A. Not at that moment, no.

Q. What happened? What conversation did Weinhold have with Cretzer at that time?

A. He said, 'Cretzer, you are a damn fool to try it. You will never make it. In a little while the alarm will be out'. He said, 'You will just get killed'.

Q. Give us the entire conversation?

A. Cretzer said, 'Yes, yes'—sort of answered Mr. Weinhold in a dubious sort of voice. About that time the siren sounded. Mr. Weinhold said, 'There is the alarm out now. You haven't got a chance'.

Q. Then what happened?

A. Shockley then said, 'We will kill every son-of-a-bitch of them'.

Mr. Spagnoli. We ask that that go out, if your Honor please, on the ground that it is hearsay as far as Thompson is concerned.

Mr. Hennessy. It is all part of the *res gestae*.

The Court. Overruled.

The Witness. Then Thompson said, 'We don't want any living witnesses. Kill them all'.

Mr. Weinhold said, 'Well, you can only die once'.

Shockley said, 'You god-damned right and you are going to die and a whole lot more'.

At that moment Cretzer pulled the trigger and Weinhold dropped to the floor. He shot into the rear of the cell and Mr. Corwin, Mr. Bristow and Mr. Burdett and I all dived or fell, and he turned the gun on Miller, who was sitting on the bunk, and shot him. Miller sagged back on the bunk.

Q. Were you hit on this first shooting?

A. No, sir.

Q. Then what happened?

A. They walked to the next cell, 402.

Q. Who walked?

A. Cretzer, and shot into that cell a number of times. I don't know how many times.

Q. Did the other inmates accompany him when he went to Cell 402?

A. They all moved over that way with him.

Q. By 'all' who do you mean?

A. Cretzer, Carnes—or Carnes, Shockley and Thompson.

Q. Do you know how many shots were fired into the third cell?

A. I couldn't say.

Q. Then what happened?

A. Then Cretzer came back, and as he came back, Shockley and the others moved back with him.

Q. By the others, whom do you mean?

A. Carnes and Thompson, and Shockley pointed in at me. Apparently I had moved, or I was sitting there.

Q. Where were you?

A. I was sitting on the toilet stool at the end of the cell.

Q. In what posture?

A. I was sitting up leaning against the wall. Shockley pointed at me. He says, 'There's one son-of-a-bitch that hasn't even been hit'.

Cretzer said, 'Lageson is a pretty decent screw. He's always treated me right'.

Thompson said, 'We don't want any living witnesses anyway. Kill them all'.

Shockley said, 'No matter if he is your friend or not, he will go to town and squawk just as loud as any other son-of-a-bitch'.

So Cretzer aimed the gun at me. He said, 'I'm sorry, Mr. Lageson', and he pulled the trigger. The gun was empty, so the mechanism only clicked. So he took out the old clip, put in a fresh clip, cocked it, and drew another bead at me and fired again. I dived or ducked or something. The bullet grazed my left cheek and passed under my ear.

Q. Then what happened?

A. I was momentarily stunned by the force of the bullet, and I just laid as if I were quite dead.

Q. Where were the other occupants of the cell at that time?

A. Mr. Weinhold was lying on the floor right in front of the door. Mr. Miller was on the bunk. Mr.

Corwin was propped up in back of the cell up against the wash basin. Mr. Burdett was lying diagonally across the corner of the bed towards the end of the cell. And Bristow was on the floor, partly under the bunk.

Q. Did you continue in that posture for some time?

A. Yes, sir.

Q. How long?

A. Off and on until we were released.

Q. About what time were you released, Mr. Lageson?

A. I think I went out of the cell house somewhat after eleven. I don't know. I was the last one of the guards to go out.

Q. Did you see any inmates outside the cell after the shooting?

A. No, sir. Whenever I heard a sound as if inmates were coming, I went back into my dead position.

Q. Did you hear any sounds?

A. Yes, sir.

Q. Did you hear any voices that you could recognize?

A. No, sir." (T. 626-631.)

Joseph Vincent Burdett was the Guard in charge of the dining room on May 2, 1946. He entered the main cell house from the dining room about 2:15 on that afternoon. As he entered the main cell house, inmate Coy was standing between cell blocks B and C and gave him a signal, pointing toward D Block. Thompson was standing near a desk there with a wrench in his hand. Cretzer was just beyond him and

had a .45 in his hand. Shockley was standing near the door leading to D Block. He had nothing in his hands. Just to the right of Shockley, Hubbard was there with a rifle and just beyond Hubbard was Carnes with a club. Cretzer had the .45 on the witness and Hubbard had him covered with the rifle. They placed him in the first cell or the officers' toilet, No. 404. Guard William A. Miller and Guard Bristow were in the cell. (T. 710-715.) Miller's thumbs were tied behind his back. The witness asked Carnes if it would be all right to untie Miller's hands and he said "Yes." Burdett then slipped the cord off the hands of Miller and as he did so Miller handed him key 107, which fitted the door leading to the outside yard. (T. 715.) The witness, Burdett, took the key and laid it on the floor under a seat right against the wall. Shortly after, the Guards were moved from this cell to No. 403. (T. 716.) At the time the Guards were moved, there was a group of inmates around the cell and they all had a hand in it. The inmates were Cretzer, Thompson, Carnes, Shockley and Hubbard. (T. 717.) The witness saw Captain Weinhold when he was brought into cell 403. When Weinhold was put in that cell, Cretzer was along. Shockley was there and Thompson was there. The witness saw Guards Baker, Simpson and Sundstrum placed in the third cell, No. 402. Shockley was present at that time. Shockley walked up and hit Sundstrum a couple of times; he hit him in the face with his fist. (T. 720-721.) The witness heard a conversation between the Guards who were in the cell with him and the inmates, relating to the keys. Thomp-

son, Shockley, Cretzer, Carnes, Hubbard and Coy were present. (T. 722.) The conversation was between Cretzer and Guard Miller. Cretzer asked him for his keys and Miller gave him a ring of keys and the inmates then went over to the door leading into the outside courtyard and tried to get out. The inmates who went to the door were Coy, Cretzer, Carnes, Hubbard, Shockley and Thompson. They did not have key 107. The witness had placed it on the floor near the wall under a bench in cell 404. The inmates came back to the cell a number of times. They were all looking for 107 key. When the siren went off, inmates Cretzer, Carnes, Thompson and Shockley were present outside of cell 403 in which the witness, Guard Miller and other Guards were confined. Cretzer had a .45 automatic, Carnes had a club and Shockley had no weapon. (T. 722-725.)

The testimony of Guard Burdett as to the shooting is as follows:

“Q. In regard to this conversation that you heard between those inmates and Captain Weinhold, just tell us what happened?

A. Just after the siren sounded, the signal there was trouble, why, Captain Weinhold called Cretzer. He said, ‘Cretzer, tell your boys not to go outside, if they do they will get hurt.’

Cretzer says, ‘You mean they will get killed, don’t you?’

Shockley—he says, ‘We are going to kill all of you, kill all the sons of bitches’, and they were talking and then Thompson, he spoke up, he said, ‘Yes, we want

no living witnesses'. Cretzer was talking to Captain Weinhold. He said, 'You are going to be the first one to die, the first son of a bitch to die', and he shot him.

Well, as the Captain fell to the floor, he shot Mr. Corwin and he fell. He turned next—Mr. Lageson and I were sitting on the bed at the side of the cell. He shot Mr. Lageson. As he shot Mr. Lageson I fell with him at the same time. He fired one shot at me and missed. Then he went over to the next cell and he fired——

Q. By 'the next cell', what cell do you mean?

A. That was—I was in 403, and he went in to 402.

Q. That was the third cell?

A. That was the third cell.

Q. Was that the cell in which Sundstrum, Baker and Simpson had been placed?

A. Yes, it was.

Q. Could you see the front of that third cell from where you were?

A. No, I couldn't see the front of the cell, but I could see the men in the front of the cell.

Q. Could you see what inmates were around in front of that third cell?

A. Shockley and Cretzer. Cairnes was standing further back from it.

Q. Tell us just what you saw or heard?

A. Well, Cretzer stepped over there in front of the next cell and he fired. I could see him firing the shots. He fired, I believe, three shots into that cell. Then he came back, Cretzer and Shockley, they stepped back in front of our cell. Shockley looked

into our cell, he seen Mr. Lageson sitting on the toilet seat in the cell. He said, 'There's one son of a bitch that hasn't even been hurt', and he says about me, he said 'How about that big son of a bitch in there?' Shockley said, 'I shot him'. Then he brought his .45 up to shoot Mr. Lageson and the gun snapped, it was empty, so he released that clip from the .45, inserted another, and says, 'I am sorry, Mr. Lageson'.

Q. Who said that?

A. Cretzer. He said, 'I am sorry, Mr. Lageson,' and fired. Well, as he fired, Mr. Lageson fell forward on me on the bed. Then they walked away from the cell. They were gone for——

Q. Who walked away from the cell?

A. The inmates.

Q. What inmates?

A. Cretzer and Carnes and Shockley and Thompson.

Q. What direction did they go?

A. They walked toward the end of the cell block, west.

Q. Did you hear any shots fired into the third cell after that?

A. Yes, sir, I did.

Q. Were you able to see who fired the shots?

A. I did.

Q. What did you see?

A. They came back to the cells a little while later and they looked me over and they said, 'I guess they are all dead in that cell. They haven't changed positions.'

Q. Who said that?

A. Cretzer said that. And then they moved over to the next cell, and there were two shots fired into the cell.

Q. Into what cell?

A. Into cell 402. That was the cell next to the one I was in.

Q. Did you see any inmates outside the cell in which you were incarcerated, 403, after this last shooting into the third cell?

A. Yes, sir, I did.

Q. What inmates did you see?

A. Coy was back in front of the cell; Cretzer was back in front of the cell; Shockley was back in front of the cell; and Thompson.

Q. You were not hit at any time, Mr. Burdett?

A. No, sir, I was not hit.

Q. In what position did you remain after the shooting into the cell by Cretzer?

A. Well, I was sitting on the side of the bed with my feet down, and when they shot I just turned and fell on my face across the corner of the bed, and I was lying with head down over the corner of the bed so I could see out in front of the cell.

Q. What time of the evening were you rescued from that cell, Mr. Burdett?

A. Around eleven o'clock." (T. 725-728.)

Joseph H. Simpson, Lieutenant of the Custodial Force at Alcatraz Penitentiary, entered the main cell house from the front office in the neighborhood of 2:15 or 2:20 on the afternoon of May 2, 1946. He pro-

ceeded down Broadway when he observed inmates, Thompson, Cretzer, Carnes and Shockley. Thompson had a rifle, Cretzer had a .45 automatic pistol and Shockley had a wrench or club, he had some object in his hand. Mail Censor Baker was accompanying Lieutenant Simpson at the time. Thompson, Carnes, Cretzer, Shockley and Coy took them around and placed them in the third cell of C Block, No. 402. There were four or five inmates right there together that put Simpson and Baker in the third cell. There were Coy, Thompson, Cretzer, and Shockley. Carnes was walking along with them. Thompson had the rifle, walking along with the Guards and poking them in the backs with it, telling them to step up. Record Clerk, Sundstrum, was later put in the cell, No. 402. Cretzer had a .45 automatic and Shockley had a wrench or club, as near as the witness, Simpson, could remember. When Sundstrom came up to the door of the cell, Shockley hit him a few times in the face with his fist. (T. 788-789.) When the siren went off, Cretzer, Shockley and Hubbard were directly in front of the cell they had Simpson in. There was some shooting at the west end of the Block. The next thing, Cretzer was standing in front of the cell in which Guards Simpson, Sundstrum and Baker were in. He fired, hitting Lieutenant Simpson. Then Shockley said, "That's Baker, the mail censor, he ain't no good, shoot him too," or "kill him too." Then Cretzer fired and hit Baker in the leg. (T. 792-793.) After the shooting, Lieutenant Simpson saw the inmates milling around out in front of the cell. He saw Coy, Cretzer, Carnes and Shockley out there later on. (T. 793.)

Robert R. Baker, the Mail Censor and Guard at Alcatraz Penitentiary, entered the main cell house from the administration section of the building at the east end about 2:30 on the afternoon of May 2, 1946. He was accompanied by Lieutenant Simpson. He walked down Broadway to the west of the cell house and made a left turn there and was confronted with about eight prisoners. Those that Baker remembered were Carnes, Cretzer, Coy, Thompson, Fleish and Shockley. Carnes had a club in his hand; Cretzer had a .45 automatic pointed at Guard Baker; Thompson had a rifle in his hand; Coy didn't have anything in his hand; Fleish was standing in the D Block door; Shockley was over towards D Block, more or less the same—right with Cretzer. (T. 834-836.) Thompson pointed the rifle. He told the witness and Guard Simpson to move over towards the west. He said, "Get along." At the same time, Cretzer aimed the .45 at Baker. He said, "Get along here." Guards Simpson and Baker were put in the third cell, No. 404: that is the officers' toilet. The inmates tried to close the door, but couldn't, so Cretzer, with a pistol, and Coy, who had been standing there, walked over and moved Guards Simpson and Baker from cell 404 to cell 402. That is the third cell. Cretzer, Shockley and Coy were outside the cell; then Sundstrum, the Record Clerk, was brought in by Cretzer and Coy. As he got to the door, Shockley struck Sundstrum twice on the side of the face. They put Sundstrum in the cell with Guard Simpson and Guard Baker. (T. 837-840.)

Carl W. Sundstrum was on May 2, 1946, Record Clerk of the Alcatraz Penitentiary. He entered the

main cell house about 2:25 in the afternoon of that day, shortly after Lieutenant Simpson and Mr. Baker. He went through the main gate at the east end of the cell house. He walked down Broadway towards the west end of the cell house. Thompson stepped out and pointed a rifle at him. (Tr. 877-878.) Just about that time another inmate named Coy came from behind B Block and grabbed him by the necktie. Cretzer stepped from behind Thompson and pointed a .45 at him. Hubbard was a little ways from Thompson, not very far from Cretzer. He didn't see anything in Hubbard's hand. Coy had what looked like some kind of butcher knife in his hand. Carnes was standing by the table where the Associate Warden has interviews. He had a kind of billy club in his hand. Cretzer, Coy and Thompson took Sundstrum over towards D Block. As he went past the second cell in C Block he saw Miller looking out. He also saw Captain Weinhold standing in the second cell looking out through the bars. There were three or four other men in there at that time. (T. 880-881.) When he got in front of the third cell of C Block inmate Shockley appeared. Shockley looked at him and said: "You son-of-a-bitch," and hit him on the chin twice. (T. 882-883.) They then put him inside the third cell where Lieutenant Simpson and Baker were confined. Cretzer directed him to take off his pants, and as he was taking off his pants, his wallet fell out of his pocket on the floor. As he started to pick up the wallet Cretzer said: "What's that?" Sundstrum said: "My wallet." Cretzer said: "Let's have it." So Sundstrum handed it to him. He opened the wallet and took \$92.00 in currency out of the wallet.

Then he handed Sundstrum back the wallet and he laid the wallet on the bed. As Cretzer took the money out of the wallet and put the money in his pocket and handed back the wallet, he said: "You can call this highway robbery." Then he took Sundstrum's pants. (T. 883-885.) He then walked away from the cell and came back a little later. Shockley came back with him. The witness did not see anything in Shockley's hand. (T. 885.)

Sundstrum testified as follows as to the shooting:

“Q. What happened then?

A. I walked to the back of the cell and found a pair of pants hanging up on a nail there in back of the cell. I put those pants on. While I was standing in the back of the cell putting these inmate's pants on Shockley and Cretzer came back in front of the cell and Shockley says: 'Kill all the sons-of-bitches, we don't want any witnesses.'

Q. Then what happened?

A. I was in back of the cell wrapping these pants around me, they were too long for me, I was wrapping them around, these pants, trying to make them fit. I just looked up to the front of the cell, then I heard someone say: 'You can't get out, anyway, you might as well give up, somebody is going to get hurt.'

Q. Where did that voice come from?

A. That was out of the next cell.

Q. Did you know whose voice it was?

A. It was Captain Weinhold.

Q. Did you recognize his voice?

A. Yes, I did.

Q. Then what happened?

A. Cretzer said: 'You will be the first one to get hurt.' Just about that time I heard the siren blow, the escape siren over there. Then all of a sudden Cretzer shot. He had this .45 in his hand, and he shot, he shot into the next cell. He said, 'You will be the first one to get hurt,' and he shot into the next cell. Then he whipped the gun around to shoot into our cell, and he shot Lieutenant Simpson right in the chest, there (indicating). I was still standing in the back of the cell watching him.

Q. Where was Simpson?

A. Simpson was sitting on the bunk next to Baker. He was farther away from the front end. Well, Baker was sitting on the bunk near the bars, near the front of the cell. Then he whipped the gun around to shoot Baker. Then he pointed the gun in my direction and when he did that, I dropped on the floor and fell with my head over against the bunk and my legs out sideways. I just laid there. I heard a big bang, I don't know where the bullet went, but it missed me.

Q. Was there any inmate outside the cell when Cretzer fired into the cell, the third cell?

A. Shockley was still standing there. I didn't see any other inmates right then. All I saw was Cretzer and Shockley. I don't know about the others.

Q. Where were they?

A. Standing up in front of the cell, outside, kind of—Cretzer was standing with his body like between the two cells.

Q. Where was Shockley?

A. Shockley was standing over a little ways, it would be to his right, about two or three feet of the right hand of Cretzer.

Q. Do you know how many shots were fired in the second cell before the shooting occurred in that third cell?

A. It seemed to me he fired one shot into that cell next to us, and then after that he shot Simpson and Baker, and then he pointed the gun at me and pulled the trigger and I fell on the floor.

Q. Then what happened?

A. I laid there with my head against the bunk and my feet stretched out; I just laid there like I was dead. I didn't move, just laid there, and then I heard a lot more shooting going on in the next cell. I heard 'Bang,' 'Bang,' 'Bang,' about five or six or seven times, I don't know how many times; then they shot into our cell a couple of more times.

Q. Did you see who shot into your cell the second time?

A. No. I had my head down, like this (indicating); I just heard the shooting. I heard Simpson say: 'He shot me again,' and then I heard Baker say: 'He shot me again,' words to that effect.

Q. You did not see who fired those second shots?

A. No; I had my head down like this (indicating) between the edge of the bunk, and there is a round lavatory there, and the left side of my head was kind of against the lavatory, and the right side of my face was against the edge of the bunk; my legs sprawled out.

Q. How long did you remain in that posture?

A. Must have been an hour there before I even moved.

Q. Did you hear or observe any convicts outside the cell in that hour?

A. Yes, I heard inmates walking back and forth in front of the cell.

Q. Did you see them?

A. I didn't look.

Q. Did you hear any conversation between the inmates walking back and forth?

A. Just before they came back and Simpson was shot the second time, and Baker was shot the second time, I heard someone say at that point, 'They are not dead there, they moved,' and that was when Simpson was shot again, and then that was when Mr. Baker was shot again, the second time.

Q. When were you rescued, Mr. Sundstrum?

A. It was pretty close to about quarter to eleven that night." (Tr. 885-888.)

The evidence clearly establishes that Shockley was present at the time of the shooting and actively aided and abetted and counseled Cretzer in the killing of Miller and the wounding of the other guards.

When the prisoners in D Block were checked on the morning of Saturday, May 4th, Shockley was found in Cell 26 on the second tier of D Block. The evidence seems to have established that Shockley was in Cell 26, although there is some difference between the testimony of the guards and the convicts on that subject. In the cell with Shockley at that time were

convicts Edwin W. Sharp, Howard Butler, Jack Pepper and James H. Quillan.

Sharp testified that after the siren blew he went in to Cell 26—Shockley's cell. (T. 1377.)

“Q. Who went in the cell?

A. Well, me and Quillan; a fellow by the name of Butler, and after a time, why, Shockley came up.” (T. 1378.)

Sharp also testified as follows:

“Q. When you were in this cell No. 26 do you remember seeing Shockley take some currency out of his pocket and tear it up?

A. He tore something up; I don't know whether money or not.

Q. What did he do with it?

A. He put some in the toilet.

Q. Did he flush the toilet?

A. Yes.” (T. 1380.)

Jack Pepper, an inmate of Block D, was called as a witness by defendant Shockley, and testified as follows:

“Q. Did you see Shockley tear up any money while he was in that cell with you on that day?

A. Yes.

Q. What did he do?

A. He just pulled some money out and tore it up.

Q. What did he do with the money?

A. Threw it in the toilet.

Q. Flushed the toilet? Did he make any statement while he was doing that?

A. No, not that I can recall.

Q. Didn't he at that time and place say: 'This will be of no good to me now?

A. I don't recall.'" (T. 1412-1413.)

Howard Butler, an inmate of Block D, was found in the same cell occupied by Shockley when the check-up was made of Block D by the prison officials on the morning of Saturday, May 4, 1946. He testified as follows:

"Q. What did all the inmates do, as far as you observed, when the siren blew in D Block?

A. They started to make way to get into the cells the closest to them.

Q. Do you recall whether or not a group of you were assembled in front of cell 26?

A. The group of us was assembled but it was not in front of cell 26.

Q. What cell did you go into?

A. I went into 26.

Q. Do you remember seeing Shockley at any time?

A. No, he was not there.

Q. Shockley was not there at that time?

A. No.

Q. How soon after the siren blew did you see Shockley?

A. Well, I couldn't say exactly, with the excitement and everything, I wouldn't be certain for accuracy.

Q. What is your best estimate as to the time?

A. Well, I would say about fifteen or twenty minutes after the siren.

Q. When Shockley came to the cell were the other inmates that you have already mentioned in cell 26 there?

A. Yes." (T. 1423-1424.)

The Record Clerk, Sundstrum, testified that Cretzer had taken currency from his wallet. Apparently Cretzer gave the currency to Shockley, and Shockley destroyed it when he returned to his cell in D Block, and flushed it in the toilet in the cell. The testimony of Shockley's own witnesses discloses that it was a considerable period after the siren went off that Shockley returned to his cell in D Block. The testimony of the Government's witnesses proves conclusively that at the time of shooting Miller, Shockley was present with Cretzer. Therefore, he could not have abandoned the conspiracy prior to the shooting of Miller.

V.

The finding of the jury as to the sanity of defendant Shockley is supported by the evidence.

The Court submitted the question of the sanity of Shockley to the jury under proper instructions. (T. 2143.) The jury by its verdict found Defendant Shockley to be sane at the time of the slaying of Guard Miller.

On October 28, 1946, at the request of counsel for defendant Shockley, the Court appointed Dr. John Alden to conduct a mental examination of Shockley. Dr. Alden visited Shockley at Alcatraz on November 5, 1946. Shockley was in his presence a little over an hour and that was the only occasion upon which he

visited Shockley. He rendered a report to the Court, to which he testified on the trial when called as a witness by the defendant Shockley. In his report to the Court he stated:

“The next question concerns the subject’s legal sanity: In my opinion, at the time of my examination on November 5, 1946, Sam Richard Shockley was able to understand the nature and consequence of his actions, was capable of understanding the nature of the charges against him, was able to confer with his attorney, and was capable of preparing his defense.” (T. 1300.)

Dr. Alden further testified at the trial as follows:

“Q. When you made that statement in your report did you refer to Shockley’s mental condition, mental state and condition at the time of the May 2nd break?

A. No, I was referring only to his condition at the time of my examination on November 5.

Q. Did you form an opinion as to his mental condition at the time of the May 2nd break?

A. No, I did not have any information concerning his action at the time or immediately preceding or following that time, and I had no reason, no evidence on which to form such an opinion.” (T. 1300).

On cross-examination, Dr. Allen testified as follows:

“Q. Now, from your entire examination of this man you came to the conclusion as expressed to the court, that he knew the nature of the acts in which he was engaged at the time you examined him?

A. That is right, yes.

Q. And he was in a competent mental condition to prepare and present his defense to the court?

A. Yes.

Q. You also believed that he knew the difference between right and wrong, didn't you?

A. Well, I didn't use that phrase, because it is a legal term and I was trying to stick as closely as possible to the medical facts.

Q. You never made any physical examination of the man, at all?

A. No.

Q. You never gave him any tests of any kind?

A. No special tests, no." (T. 1313-1314.)

Reading the entire testimony it is apparent that he did not express any opinion as to the sanity of Shockley on May 2, 1946, at the time of the slaying of Guard Miller.

Counsel for defendant Shockley placed upon the stand a number of the inmates of D Block and attempted to elicit from them, as intimate acquaintances, their opinion as to the sanity of Shockley on May 2, 1946. These witnesses were permitted by the Court to testify to their observations of Shockley and as to his conduct and appearance. With possibly one exception, the Court ruled that they did not qualify as intimate acquaintances and refused to permit them to give their opinions as to his sanity.

The admission or exclusion of the opinion of a lay witness as to the sanity of a person is within the trial Judge's sound discretion.

Taylor v. United States, 71 F. (2d) 76.

His determination of the matter will be reviewed or reversed only where there has been a clear abuse of discretion.

Estate of Perkins, 195 Cal. 699.

“Whether or not a witness may testify as an intimate acquaintance is a question of fact for the trial Court to determine. The Court is vested with a wide discretion and its determination will be interfered with upon review only in case the Court has abused its discretion.”

Estate of Perkins, supra;

Atkins Corporation v. Tourney, 6 Cal. (2d) 206;

In re Hill, 13 Cal. App. (2d) 326.

An examination of the testimony of the various inmates, whose opinions were requested by counsel for Shockley, will disclose that the Court was fully justified in ruling that they did not qualify as intimate acquaintances. They did not possess that personal, confidential and familiar relation with Shockley that would constitute them as intimate acquaintances of him.

There was no impropriety in the comment by the trial Court when the attorney for Shockley attempted to elicit from Henri Young his opinion as to the sanity of Shockley. It was the duty of the Court in passing on the question of whether a particular witness was an intimate acquaintance to weigh the credibility of the witness.

“The comments of the Court on occurrences during the trial or on the evidence where he is authorized to comment thereon, will not be reviewed

or held erroneous except for an abuse of discretion.”

Heslin v. Malone, 116 Conn. 471.

In determining the question of the sanity of Shockley, the Jury had ample opportunity to observe him throughout the trial of the case and also his demeanor and testimony when on the witness stand. On cross-examination Shockley testified very clearly as to the incidents of his life occurring years ago, but suffered a convenient lapse of memory when questioned concerning the happenings at Alcatraz Penitentiary on the afternoon of May 2, 1946. (T. 1568-1578.)

When Robert C. Bristow was upon the witness stand, he testified to the conduct of Shockley on the afternoon of May 2, 1946. On cross-examination by the attorney for defendant Shockley, he was asked the following questions to which he gave the following answers:

“Q. How was Shockley acting when you first saw him?

A. Acting definitely sane, so far as I could tell.

Q. I mean did he walk around, did he jump around, or what did he do?

A. He just acted like he wanted to get rid of a bunch of guards.” (T. 500.)

On cross-examination by the attorney for defendant Shockley, Cecil D. Corwin testified as follows:

“Q. Did you see anybody else milling about the corridor here outside 404?

A. I saw Shockley.

Q. Who else?

A. I saw Hubbard.

Q. When you saw Shockley isn't it true he was running around like a crazy man?

A. Well, I don't know how to answer that question. I don't know how crazy men run around.

Q. Just describe his actions.

A. Well, he seemed to be—he was excited, yes, if that is what you mean. He was urging Cretzer to kill us.

Q. As a matter of fact, prior to this altercation with Cretzer shooting, didn't you see Shockley run around beating his breasts, shaking his fists, running around excitedly up and down the corridor?

A. No, he walked by there and he said, 'Kill every one of the yellow-bellied bastards so they can't testify against us.'

Q. Prior to that, though, did you see him do anything unusual?

A. No." (T. 586-587.)

Guard Lageson, on cross-examination by the attorney for defendant Shockley, testified as follows:

"Q. Did you see Shockley at that time and place?

A. No.

Q. How long after was it you saw Shockley?

A. I saw Shockley after I was locked in cell 403.

Q. You were already a hostage?

A. Yes.

Q. Was there anything unusual about Shockley's appearance when you saw him?

A. No.

Q. Isn't it a fact he was running around yelling, hollering?

A. They were all doing that.

Q. I asked you about Shockley?

A. He might have been.

Q. You testified at the Coroner's Inquest, didn't you in this case?

A. Yes.

Q. I will show you page 45, line 21—would you examine this? It starts with the middle of this answer here. (Handing document to the witness.) I will ask you if at the Coroner's Inquest in this case you gave this part of an answer on page 45: 'They seemed to be having trouble with the keys and in the meantime I saw two more inmates, Thompson and Shockley; Shockley had a pipe wrench that apparently had been taken out of the utility corridor, and he was running back and forth with the pipe wrench, hollering curses and yelling.' Do you remember that?

A. Yes.

Q. Was there any reason why you don't want to testify to that today?

Mr. Hennessy. I submit that is improper cross-examination.

The Court. Sustain the objection.

Mr. Sullivan. Is the objection sustained?

The Court. Yes.

Mr. Sullivan. Very well, your Honor.

Q. Now, Mr. Lageson, isn't it a fact that at that time and place Shockley was running around like a madman?

A. I have never seen a madman; I don't know.

Q. Isn't it a fact that Shockley was running up and down with a wrench in his hand, shaking it at everybody and yelling curses?

A. I didn't see him shaking it at any time. He was running up and down with it, yes. He was also cursing.

Q. Isn't it a fact he was acting differently than the other convicts at that time and place?

A. No; he was no more excited than any of the others were.

Q. You have known Shockley for some time?

A. Yes, I know him since I came to work there.

Q. You have been on duty in D Block?

A. Yes.

Q. Isn't it a fact all the time he has been in there he remains in there?

A. Yes.

Q. He is very uncommunicative, so it would be unusual for him to be running around screaming and cursing and making any noises whatsoever, wouldn't it?

A. I wouldn't be the judge to say whether it was unusual. He was doing that.

Q. You remember seeing him do it before?

A. I never saw him under those conditions before.

Q. You had never seen him talk to anybody before, had you?

A. He used to talk to me.

Q. But you did not see him talk to the other inmates?

A. Yes.

Q. Very, very few occasions, though?

A. He used to speak, they used to yell from cell to cell.

Q. Isn't it a fact he has kept mostly to himself in that cell?

A. He has been by himself quite a bit, yes." (T. 641-644.)

Guard Joseph H. Simpson, on cross-examination by the attorney for defendant Shockley, testified as follows:

"Q. You were well acquainted with Sam Shockley?

A. I knew him, yes.

Q. In the course of your duties have you had occasion to frequently go into D Block?

A. I did.

Q. Did you have a chance to observe Shockley very often in there.

A. I saw him as a rule when I went in there, yes.

Q. Did you observe him frequently enough to form an opinion as to his intelligence?

Mr. Hennessy. I submit we are not concerned with his intelligence, but more with his sanity.

Mr. Sullivan. I will withdraw it.

The Witness. I don't think I am qualified to answer that. I never——

Mr. Sullivan. Q. Well, I will rephrase the question. Do you know, or do you think you know him well enough to form an opinion, or express an opinion regarding his sanity?

A. No, I do not.

Q. You have had an intimate contact with him?

A. Not enough to tell that, no.

Q. From your observation of Shockley would you say he has been rather uncommunicative with the other prisoners?

A. No, I wouldn't say that.

Q. You know while he is in D Block he has been forbidden to communicate with prisoners in the main cell house?

A. That is a standing rule.

Q. That is a standing rule?

A. Yes.

Q. From your observation of him in D Block have you observed whether or not he frequently has conversed with the other prisoners in D Block?

A. I noticed nothing about his actions that showed him any different than any of the other inmates in D Block.

Q. You knew he had been put in solitary confinement on several occasions?

Mr. Hennessy. I object to that as not proper cross-examination.

The Court. I will overrule the objection. He may answer if he knows.

The Witness. Yes, I know. I knew he had been placed in solitary.

Mr. Sullivan. Q. From your experience with prisoners over there, you know when they come out of that place, a place like that, very, very frequently they are not normal and rational human beings?

Mr. Hennessy. I object to that as calling for a conclusion of the witness and not proper cross-examination.

The Court. It calls for the opinion, that is true. I think you can ask him what he observed concerning such matters. I think the objection is more to the form of the question.

Mr. Sullivan. Very well.

Q. On the various occasions you observed Shockley come out of solitary confinement have you observed anything unusual about his conduct after he came out of solitary?

A. No.

Q. Would you say his attitude was just as obedient and respectful towards you and other officers as it would be from a prisoner who had the general run of the cell house?

Mr. Hennessy. I object to that as calling for a conclusion of the witness.

The Court. I will sustain the objection. Ask him what he saw or observed.

Mr. Sullivan. Q. Did you observe anything unusual about Shockley's appearance and attitude on coming out of solitary?

A. What I observed of Shockley was that he resented any kind of authority.

Q. He did. Was that attitude toward authority more pronounced when he came out of solitary than on other occasions?

A. No.

Q. You are sure of that?

A. That is my opinion." (T. 795-797.)

Guard Carl W. Sundstrum on cross-examination by the attorney for Shockley testified as follows:

“Q. Shockley was not doing time for murder, though, was he?

A. No, he was doing time for something else.

Q. For bank robbery?

A. Kidnapping.

Q. Bank robbery and kidnapping, that is right, but as between the two men you knew Cretzer was the more vicious, didn't you?

Mr. Hennessy. I object to that as calling for the opinion of the witness.

The Court. If he wants his opinion, I will allow the witness to answer it.

The Witness. What was that question?

Mr. Sullivan. Q. I said as between the two men you knew Cretzer was the more vicious, didn't you?

A. No, I knew Shockley was the one who hit me on the chin.

Q. I didn't ask you that. I said as between Cretzer and Shockley, you knew Cretzer was the more vicious?

A. I would say there were both vicious.

Q. They were both vicious?

A. Yes, I would say.

Q. You say Shockley was a vicious criminal?

A. I would say so.

Q. In your opinion?

A. In my opinion.

Q. A big stalwart sturdy criminal—is that your definition of Shockley?

A. I just——

The Court. He did not say that, Counsel.

The Witness. I just said he was vicious, that is all.

Mr. Sullivan. Q. Vicious mentally or vicious physically?

A. Just vicious.

Q. Would you include the physical temperament in that respect?

The Court. I have allowed this examination to proceed, but you have gotten far afield.

Mr. Hennessy. I will object to the question on the ground it is not proper cross-examination.

The Court. It is argumentative. I think perhaps the Court was wrong in allowing the examination to proceed, but Counsel seemed to want to go into those matters of the opinion of the witness, and it leads us astray when you do that.

Mr. Sullivan. Q. Isn't a fact, Mr. Sundstrum, during the period of time that you saw Shockley that day he was running around there in an irrational manner, shouting, cursing, waving his arms around in the air, and behaving as a madman?

A. When I saw him he was just standing there.

Q. When he came up and hit you on the chin, didn't he impress you at that time and place as acting like a madman?

A. I would say he acted kind of mean and vicious.

Q. Isn't it a fact that he acted like an animal who has suddenly been released from captivity after three or four years and turned loose?

A. I wouldn't be prepared—I never saw an animal that was just released from captivity.

Q. You do not call them animals over there in D Block?

A. Who?

Q. You do not call any of those fellows who are locked up in D Block for some period of time animals, would you?

A. I wouldn't call them animals." (T. 906-908.)

There was ample evidence to sustain the finding of the Jury that Shockley was sane. The only evidence to the contrary consisted of statements by fellow inmates, which evidently the Jury did not believe.

**(b) ADDRESSED TO THE POINTS RAISED BY APPELLANT
MIRAN EDGAR THOMPSON.**

(1) Counsel for defendant Thompson have objected to a portion of the instructions given by the Court bearing upon the credibility of the various witnesses who testified, and have quoted in the brief only a portion of the charge of the Court upon that subject.

An examination of the entire instruction will disclose that it is not objectionable in any way. (T. 2131-2132.)

The record further discloses that Thompson did not make any objection to this portion of the charge before the jury retired to consider its verdict. Rule 30 of the Rules of Criminal Procedure provides:

"No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matters to which he objects and the grounds of his objection."

(2) The charge of the Court as to the testimony of the defendant is not objectionable. It states the law correctly. (T. 2134.)

Furthermore, counsel did not object to this portion of the charge before the jury retired as required by Rule 30 of the Rules of Criminal Procedure.

(3) The instruction of the Court as to the rejection of the testimony of any witness demonstrated to have testified falsely is a correct statement of the law. (T. 2131-2132.)

Furthermore, counsel did not object to this portion of the charge before the jury retired as required by Rule 30 of the Rules of Criminal Procedure.

(4) Counsel objected to this instruction given by the Court:

“You may also consider in that connection the criminal record of any defendant. You may not disregard the testimony of a witness because he is a convicted felon, but you may consider in determining whether you wish to believe all or any part of his testimony his criminal record.” (T. 2132.)

This objection was made before the jury retired to deliberate upon the verdict.

The use of the term “criminal record” by the Court could not have prejudiced the defendant because the only criminal record that was in evidence consisted of convictions of felonies by the defendant. There was no other criminal record that the jury could consider. The Government was not limited to showing only one conviction of a felony by a defendant. It is permitted

to show that the defendant had been convicted of other felonies, bearing upon his credibility.

“The defendant had voluntarily offered himself as a witness in his own behalf, and evidence that he had been convicted of other crimes was clearly admissible as bearing upon his credibility.”

MacKnight v. United States (1st Cir.), 263 F. 840;

Edwards v. United States, 18 Fed. (2d) 402.

(5) Counsel claims that the verdict is void because it is not a complete verdict. He says that the jury was not asked if they had returned the verdict after the verdict was recorded and that, therefore, the jury was discharged without rendering a complete verdict.

The action taken by the Court upon the return of the verdict conformed to Rule 31 of the Rules of Criminal Procedure. Subdivision (d) of Rule 31 provides:

“When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court’s own motion.”

The Rules of Criminal Procedure require the Judge to poll the jury before the verdict is recorded. The sections of the Penal Code of California cited by counsel have no application.

(6) There is no uncertainty in the charge of murder contained in the indictment.

While Guard Miller died on May 3, 1946, the act that caused his death was committed on May 2, 1946.

(7) Counsel claim that the verdict fails to fix the punishment.

Section 454, Title 18 of the U. S. Criminal Code Annotated, provides:

“Every person guilty of murder in the first degree, shall suffer death.”

Section 567, Title 18, U.S.C.A. provides:

“In all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto ‘without capital punishment’; and whenever the jury shall return a verdict qualified as aforesaid, the person convicted shall be sentenced to imprisonment for life.”

The Court fully instructed the jury that they could qualify a verdict of guilty of first degree murder by providing that it should be without capital punishment. He used the following language:

“There is also a statute which is involved in this case which provides that in all cases where an accused is found guilty of the crime of murder in the first degree by the jury may qualify their verdict by adding thereto the words ‘without capital punishment,’ by the provisions of this law. An authority and power is granted to the jury in a case where a verdict of first degree murder is found. That power or authority to the jury is to decide in the event the accused is found guilty of the crime of murder in the first degree, that he shall not be executed, but shall be punished for life. The Congress of the United States, in passing that statute, has determined that it was proper

to leave to the sound discretion of the jury what weight shall be given to considerations such as age or sex or ignorance or human passion or weakness or the irrevocableness of the death penalty." (T. 2140-2141.)

Furthermore, in submitting forms of verdict to the jury, the Court submitted one in the following language:

"We the Jury find the defendant," naming him, "guilty of murder in the first degree without capital punishment." (T. 2145.)

(8) The Court did not erroneously permit the United States Attorney too wide a latitude in his cross-examination of defendant Thompson.

On direct examination defendant Thompson testified that he was in his cell on the afternoon of May 2, 1946, because he got a "lay-in" from the hospital. (T. 1813.) It was the contention of the Government, supported by the testimony of witnesses H. F. Herbert and Glen M. Pehrson (T. 234-257) that Thompson had knowledge in advance that an attempt to escape was to be made on the afternoon of May 2, 1946; that he was employed in the tailor shop, which is in the industrial area of the United States Penitentiary at Alcatraz; that on Tuesday, April 30, 1946, Thompson spoke to the witness Herbert, who was in charge of the tailor shop, about getting a lay-in on Thursday afternoon, May 2nd, 1946, and asked Herbert if he could get a "lay-in" for that afternoon. Thompson repeated this conversation with Herbert on Tuesday, and Wednesday, also, of the same week. It was proper on

cross-examination for the Government to show that Thompson got the "lay-in" Thursday afternoon, May 2, 1946, not because he was sick, but because he wished to be in the cell house when the attempted break was to be made. (T. 1852.)

Defendant Thompson further testified that he found a note in his cell at dinner time on May 2, 1946, from Coy, in which Coy stated he was going to escape and told Thompson if he wanted to go he would let him out of his cell and nobody would get hurt. (T. 1830-1831.)

It was proper for the Government on cross-examination to ask Thompson if he did not have a conversation with Coy on the preceding day, May 1, 1946, in which Coy told him, "Buddy, we are going home tomorrow. Do you want to go along?" (T. 1863-1864.)

Thompson denied any such conversation and, therefore, was not prejudiced by the question, although it was a perfectly proper question on cross-examination.

(9) Thompson, on direct examination, testified that he did not in any manner, shape or form abet or urge in the killing of Mr. Miller, saying: "No, I didn't. I have never helped kill anyone." (T. 1839.)

He also testified on cross-examination to the effect that he had been brought back to Texas and tried on a murder charge down there. It was proper for the Government to show he had been previously convicted of the crime of murder in the State of Texas and had been convicted of other felonies. (T. 1856-1860.)

MacKnight v. United States, supra;

Edwards v. United States, supra.

Thompson, on direct examination, testified as to what he claimed had happened in the main cell house on the afternoon of May 2, 1946. It was proper for the Government on cross-examination to examine him in detail as to what happened in the cell house. He testified that he saw Captain Weinhold come over to the end of D Block. He then testified:

“Q. Who was with him when he came over there?

A. Well, when Hubbard was back there with a rifle, I was alongside.

Q. What did you have?

A. A club.

Q. Where did you get that club?

A. I think Hubbard handed it to me.” (T. 1867.)

It was also proper on cross-examination to ask the witness if he had seen Sam Shockley strike Sundstrum as Sundstrum was being put in the cell. (T. 1876.) It was also proper for the Court to refuse to permit the defendant Thompson to go into the facts of the murder case prosecuted against him in Texas, and also to preclude him from testifying as to the reason why he attempted to escape.

(10) The statements of the Court concerning the applications for writs of habeas corpus *ad testificandum* were proper. The Court had the right to require an assurance from counsel as to the materiality of the testimony sought from the persons whose production was requested by the writ.

(11) There was no error committed in the admission of the commitment issued by the United States

District Court for the Northern District of Texas, Amarillo Division, dated May 29, 1945. (T. 358-360.) It was proper to show that at the time of the break Thompson was an inmate of the Alcatraz Penitentiary held under a commitment from a United States District Court. The validity of the commitment was not before the Court. If the prisoner was held under color of law, he could be guilty of escape.

“The statute, 18 U.S.C.A. Section 753 (h), forbids escape, not only to those ‘properly in the custody of the Attorney General’ but also to all ‘who are confined in any penal or correctional institution, pursuant to his direction,’ without mention of the propriety of the confinement. We are of opinion that attempts at escape from such institutions are * * * forbidden to all inmates, and that, if they consider their confinement improper, they are bound to take other means to test the question.”

Bayless v. United States (9th Cir.) 141 Fed. (2d) 578 (p. 580).

(12) There was no misconduct on the part of the United States Attorney concerning the demands of counsel for Defendant Thompson for an alleged statement taken by the Federal Bureau of Investigation from him. When demand was made by the prosecution, the United States Attorney said:

“Mr. Hennessy. I haven’t any statement.” (T. 1781.)

When counsel again asked for the privilege of inspecting the alleged statement, the United States Attorney said:

“Mr. Hennessy. I will say I haven’t got the confession.

Mr. Spagnoli. There is no confession, your Honor. We assign that as gross misconduct on the part of the District Attorney and prejudicial to the defendant Thompson.

Mr. Hennessy. Well, the statement.

Mr. Spagnoli. He has never made a confession. A confession imputes that he murdered or killed Guard Miller, which Mr. Hennessy knows he never confessed; he had nothing to confess.

Mr. Hennessy. Well, call it a statement.

Mr. Spagnoli. That is prejudicial to the defendant Thompson.

Mr. Hennessy. Call it a statement if you want, but I haven’t got the statement. Is that plain enough for you?” (T. 1780-1781.)

Inasmuch as the United States Attorney stated he had no such document, it matters little whether it is called a confession or a statement. Finally both of the parties agreed on calling it a statement. There was no prejudice to the defendant.

(13) The testimony relative to the homicide of Harold Stites was properly admitted.

Stites was killed on the evening of May 2, 1946 while in the west gun gallery. This evidence was admissible as part of the *res gestae*. It was an occurrence during the attempted escape.

The term “*res gestae*” may be defined as those circumstances which are the undesigned incidents of a

particular litigated act and which are admissible when illustrative of such acts.

Ft. Smith Oil Co. v. Glover, 24 S. W. 106, 58 Ark. 168;

First Nat'l Bank v. Home Ins. Co., 274 Pa. 129.

The test of the admissibility of evidence as a part of the *res gestae* is whether the Act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event, which it characterizes, as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.

32 C.J.S. 403;

Molloy v. Chicago Rapid Transit Co., 166 N. E. 530, 335 Ill. 164;

Carter v. C. F. Smith Co., 281 N. W. 380, 285 Mich. 621.

The main transaction is not necessarily confined to a particular point of time, but may extend over a longer or shorter period, according to the nature and character of the transaction.

32 C.J.S. 408;

Yarbrough v. Prudential Ins. Co. (CCA-Ga.) 99 Fed. (2d) 874.

The circumstances attendant on the main or principal fact may be shown.

Louisville & Northern Railway Co. v. Hamby, 93 So. 698, 208 Ala. 75.

The admissibility of evidence as part of *res gestae* is a matter resting largely in the discretion of the trial Court.

Fort St. Union Depot v. Hillen (CCA-Mich.)
119 Fed. (2d) 307.

(14) There was no error in the refusal of the Court to permit counsel to examine the statement made by Guard Corwin to the Federal Bureau of Investigation. (T. 605.)

The records sought by counsel constituted official records of the Division of Investigation of the United States Department of Justice. Such documents are confidential in character, are in the custody of the Attorney General, and may not be released by subordinate members of the Department of Justice.

Title 5 U.S.C.A. Sec. 22;

Section 65, Rules and Regulations of the Division of Investigation, United States Department of Justice;

Ex parte Sackett (9th Cir.) 74 F. (2d) 922.

In a note to the last-mentioned case, Section 65 of the Rules and Regulations of the Division of Investigation of the United States Department of Justice is set forth.

Rule 16 of the Federal Rules of Criminal Procedure, providing for the discovery and inspection of documents, does not apply to the Federal Bureau of Investigation reports.

United States v. Black, 6 F.R.D. 270 (N. D. Ind.).

See, also,

United States v. Abraham Meller, C124-167
(S.D.N.Y.).

(15) There was no error in admitting the handwriting on the wall of Cell 403 made thereon by Guard Lageson.

While Guard Lageson was in Cell No. 403 on the night of May 2, 1946, after the shooting of the guards, and before the guards were rescued, he wrote the names of six men on the wall of the cell. The names written were Cretzer, Coy, Carnes, Shockley, Hubbard and Thompson. While the writing of these names on the wall was undoubtedly a part of the *res gestae*, and admissible as such, counsel for the Government did not bring out the fact of the writing of these names during the direct examination of Guard Lageson. However, during the cross-examination of Guard Lageson, he was asked the following question by Mr. Zamloch, the attorney for defendant Carnes:

“Q. Of course it is. In other words, there was a great deal of excitement. You were all under stress. You naturally could not make any notes at the time, and you had to rely on your reconstruction the next day as best you could remember; isn't that about it?

A. Yes, true.” (T. 674-675.)

On redirect examination, the United States Attorney questioned the witness as follows:

“Mr. Hennessy. Q. Mr. Zamloch, in his examination of you, asked if you had made any notes while this thing was occurring.

A. I made no notes.

Mr. Zamloch. I didn't ask that question.

The Court. No.

Mr. Hennessy. He said, 'Of course, you made no notes and you are depending only on your recollection of what happened.'

The Court. I think what he said was, 'Of course, you didn't make any notes while this was going on.'

Mr. Zamloch. That is correct.

Mr. Hennessy. I want to ask him if he did make any notes.

Mr. Zamloch. He answered.

The Witness. I made no notes on paper, no.

Mr. Hennessy. Q. Did you make any notes at all?

A. I wrote the names of six men on the wall of the cell.

Q. In what cell.

A. No. 403.

Q. When did you write the names of the six men on the wall of the cell?

A. That was after the shooting.

Q. About how long after?

A. I wouldn't be able to say; sometime during the night.

Q. Before you were rescued?

A. Yes.

Q. I show you this photograph and ask if the handwriting on the wall of the same is your handwriting, if it is a correct photograph?

A. Yes, sir, it is my handwriting.

Q. That is your handwriting?

A. Yes.

Q. What names did you write on the wall of the cell at that time?

A. I wrote the names of six men.

Q. What?

A. Cretzer—

Mr. Spagnoli. We object on the ground it is not the best evidence, and it is entirely immaterial, irrelevant and incompetent, and self-serving, and it is not proper redirect examination.

Mr. Sullivan. I join in the objection and further it is so far remote in point of time it is not part of the *res gestae*. I think by this witness' own statement, he wrote it many hours later, it is so much hearsay. It violates the very basis and theory of—

Mr. Hennessy. Counsel asked him whether he made any notes at that time.

The Court. I will overrule the objection.

Mr. Hennessy. Q. What six men?

Mr. Spagnoli. We object on the same grounds. It is an attempt to bolster up his own testimony.

The Court. Well, you just objected to it and I overruled it.

Mr. Spagnoli. You are asking him for the names?

The Court. That is the question you objected to and I ruled on it.

The Witness. A. Cretzer, Coy, Carnes, Shockley, Hubbard, Thompson.

Mr. Hennessy. Q. This is a correct photograph of that writing on the wall you made at that time?

A. Yes.

Mr. Hennessy. I offer this in evidence and ask it be marked Government's next in order, and that the jury be permitted to see it.

Mr. Spagnoli. We object to the offer on the ground the proper foundation has not been laid for it. It is not the best evidence and it is entirely hearsay.

The Court. Do you wish to make the same objection?

Mr. Sullivan. I make the objection it is incompetent, irrelevant and immaterial, beyond the scope of the *res gestae*; it is hearsay and no foundation laid.

Mr. Zamloch. Mr. Hennessy has assumed something which is incorrect, your Honor. He assumed the door was opened on the questioning of this witness—

Mr. Hennessy. You did.

Mr. Zamloch. I did not question him on notes. I merely questioned him as to the reconstruction of the events. What I asked was, whether he had any notes, referring, of course, your Honor to notes as to answers that he gave.

Mr. Hennessy. Well, he did make notes.

Mr. Zamloch. What you are doing is to bolster up his testimony.

The Court. Well, you are arguing the weight of the evidence. I will overrule the objection.

(The photograph was marked U. S. Exhibit 25 in evidence.)

Mr. Spagnoli. I ask it not be considered against Thompson. I don't believe we asked him about any notes on cross-examination. If this was brought out by other counsel in the case we have no opportunity

even to object to their questions, we could not ask him to withdraw it; if one of the associate counsel for Thompson had put the question, Mr. Vinkler or myself, he could have withdrawn my question and I could have withdrawn his, but we are placed in a peculiar position.

The Court. The evidence that is already in is sufficient to justify the admission. I have overruled the objection." (T. 681-684.)

The evidence was properly admitted because of the question asked the witness Lageson on his cross-examination by Mr. Zamloch, and it was further admissible because it constituted an occurrence in the course of the conspiracy and was a part of the *res gestae*. (See authorities heretofore cited in Paragraph 13.)

(16) There was no misconduct on the part of the United States Attorney in his cross-examination of Defendant Thompson's witness W. L. Baker.

On direct examination of witness W. L. Baker, called by counsel for defendant Thompson, he was asked the following questions by Mr. Spagnoli:

"Q. What are you charged with over at Alcatraz, if you don't mind, tell us.

A. Kidnapping.

Q. Technical kidnapping?

Mr. Hennessy. I object to that on the ground there is no such offense.

Mr. Spagnoli. Driving a car across a state line?

Mr. Hennessy. If you don't want to bring out the facts, I will bring them out.

Mr. Spagnoli. We may prove him innocent here. We had one innocent man this morning, Mr. Peabody.

Mr. Hennessy. Your clients are always innocent, I presume.

Mr. Spagnoli. Q. How much of a sentence did they give you?

A. Life." (T. 1661.)

On cross-examination the witness was asked:

"Q. What felonies were you convicted of besides kidnapping?

A. Murder and manslaughter.

Q. Who did you murder?

A. My father." (T. 1675-1676.)

There was no impropriety in asking these questions. The subject of the conviction had been brought out by his own counsel on his direct examination, and it was proper to identify the particular felonies of which he had been convicted. No objection was made to the question when it was asked the witness.

(17) There was no error in disallowing the question by defendant's counsel of witness W. L. Baker, an inmate of Alcatraz, as to whether he felt he was jeopardizing his position as prison librarian by testifying.

The question was manifestly improper and a self-serving statement by counsel. (T. 1677.)

(18) The trial Court had jurisdiction of the offense.

The trial Court had jurisdiction in this case for two reasons: *First*, the defendant was charged with killing

a Federal officer in violation of Section 253, Title 18 U.S.C.A., and *second*, the killing took place in the Alcatraz Penitentiary, a place reserved exclusively for the use of the United States and under the exclusive jurisdiction thereof, and within this Division and District.

The introduction in evidence of Executive Order of President Fillmore, dated November 6, 1850, reserving Alcatraz to the United States, and the introduction in evidence of a certified copy of the map of Alcatraz Island, recorded in the Office of the Recorder of the City and County of San Francisco on June 23, 1913, together with the testimony of Warden Johnston as to the use of Alcatraz Island as a United States prison, constituted the necessary jurisdictional proof.

In 1897 the State of California passed the following statute:

“Section 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this state now held, occupied, or reserved by the government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purpose: Provided, that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated; and provided further, that this state reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this state against any person or persons charged with crimes committed without said lands.

“Section 2. This Act shall take effect immediately.”

Stats. Cal. 1897, p. 51.

It was in pursuance of this statute that the map was recorded in the Office of the Recorder of the City and County of San Francisco on June 23, 1913.

By Public Law No. 494, S. 2531, 75th Congress, 3rd Session, Chapter 176, 52 Stat. 247, Congress transferred Alcatraz Island to the United States Department of Justice.

See, also,

United States v. Watkins, 22 Fed. (2d) 438.

(19) The verdict as to defendant Thompson is sustained by the evidence.

The evidence shows that defendant Thompson, who was celled in C Block in the main cell house, had been employed in the tailor shop of the Alcatraz Penitentiary for some time prior to May 2, 1946, and that on Monday, April 29, 1946, he approached the foreman of the tailor shop, Mr. Herbert, and requested that he be given a lay-in for the afternoon of May 2, 1946. He repeated this request again on Tuesday and Wednesday, April 30th and May 1st, 1946. (Tr. 236-237.) At noon of May 2, 1946, he visited the hospital and procured a pass permitting him to remain in his cell on that afternoon.

After Guard Miller had been overcome and his keys taken from him by inmates Coy and Hubbard, Cretzer, Thompson and Carnes were released from their cells in the main cell house. Thompson immediately joined

the other inmates in their effort to escape from the penitentiary. When Burdett entered the main cell house from the dining room, the first man he noticed was Thompson, who was standing near a desk on the west end of the cell house with a wrench in his hand. (T. 711.)

Thompson accompanied Cretzer and Shockley when Captain Weinhold was placed in a cell. (T. 718-719.) When Guards Simpson and Baker entered the main cell house, they were seized by Thompson and other inmates. Thompson had a rifle. Cretzer had a .45 automatic pistol and Shockley had a wrench or club. (T. 834-838.) Thompson pointed the rifle at them, and with Cretzer herded them into the third cell of C Block. (837-840.) When Sundstrum, in the main cell house, walked down Broadway toward the west end of the cell house, Thompson stepped out and pointed the rifle at him. (T. 877-878.) Cretzer, Coy and Thompson took Sundstrum and placed him in the third cell of C Block. (T. 882-883.)

Thompson was present when the conversation took place between the inmates and the guards relating to the keys. (T. 733.) He went to the door leading to the courtyard with the other inmates when they endeavored to open door 107. (T. 722.) He was outside cell 403 when Cretzer engaged Captain Weinhold in conversation (T. 724), and, according to the testimony of witness Burdett, Shockley said: "We are going to kill all of you, kill all the sons of bitches."

Thompson spoke up and said: "Yes, we want no living witnesses." (T. 725.) According to the testi-

mony of Guard Lageson, Shockley said: "We will kill every son-of-a-bitch of them," and Thompson said: "We don't want any living witnesses. Kill them all." (T. 628.)

Thompson claimed that he had withdrawn from the conspiracy and returned to his cell after the sounding of the siren and before the shooting. He offered the testimony of certain inmates to substantiate his claim. Their testimony was contradicted by the testimony of Guards Burdett and Lageson, showing that he was actually present alongside of Cretzer and urging Cretzer to kill the guards. Furthermore, the testimony of Captain Weinhold shows that he was outside the cells in the corridor of C Block sometime after the shooting and was armed with a rifle.

The jury evidently did not believe the testimony of Thompson and his witnesses, but rather accepted as true the statements of the guards.

The defendants in this case received a fair and impartial trial, and the verdict of the jury was fully supported by the evidence.

Dated, San Francisco, California,
November 14, 1947.

Respectfully submitted,

FRANK J. HENNESSY,

United States Attorney,

DANIEL C. DEASY,

Assistant United States Attorney,

Attorneys for Appellee.

No. 11513

United States
Circuit Court of Appeals
For the Ninth Circuit.

PERCY JAMES CUTTING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court
for the Territory of Alaska,
Fourth Division

FILED

FEB 13 1908

PAUL A. O'NEILL

No. 11513

United States
Circuit Court of Appeals
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PERCY JAMES CUTTING,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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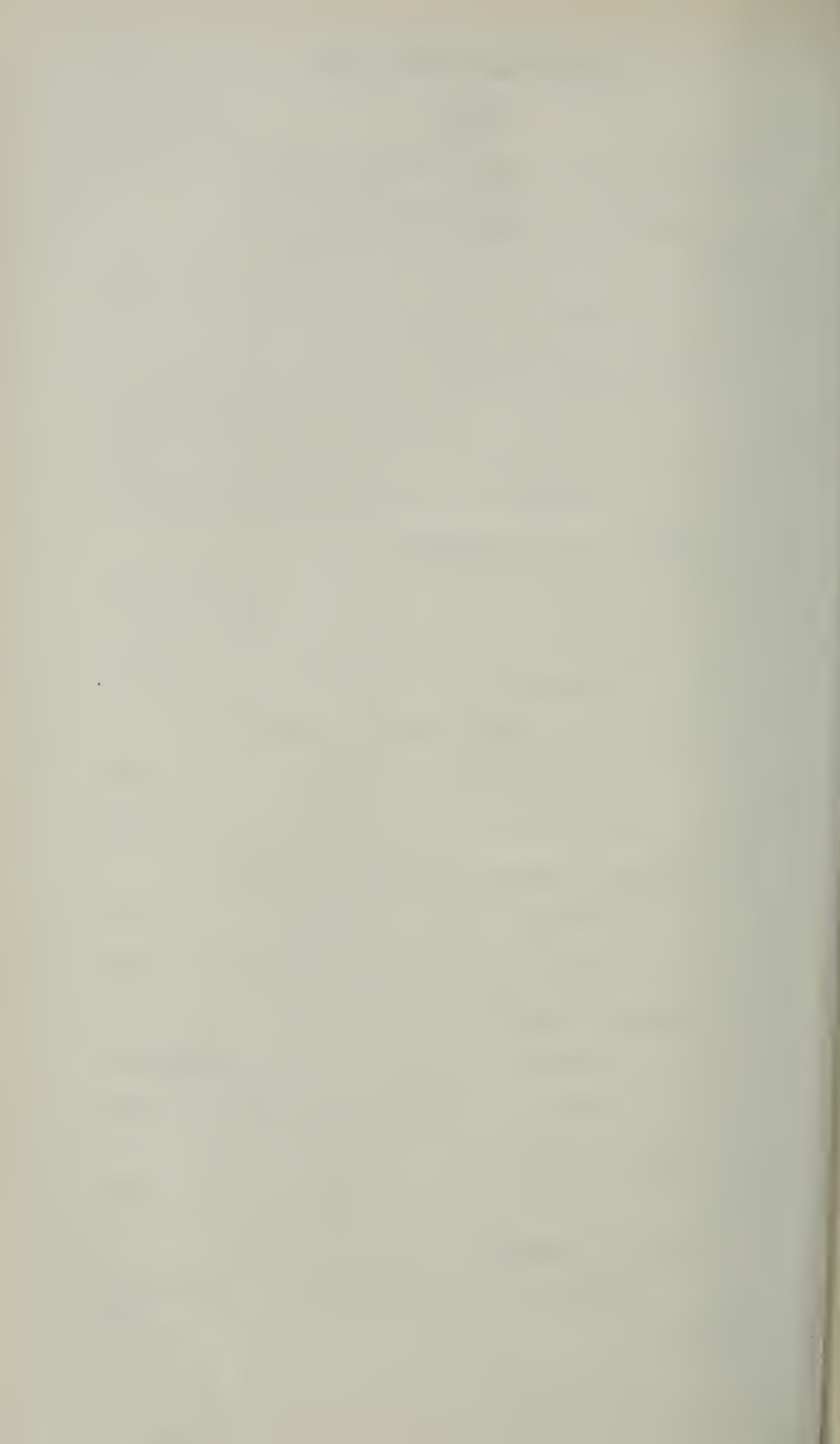
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ATTORNEYS OF RECORD

HARRY O. AREND,
United States Attorney,
Fairbanks, Alaska,
Attorney for Plaintiff and Appellee.

WARREN A. TAYLOR,
Fairbanks, Alaska,
Attorney for Defendant and Appellant.

In the District Court for the Territory of
Alaska, Fourth Judicial Division

Cr. No. 1268

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERCY JAMES CUTTING,

Defendant.

INDICTMENT

Count I.

Percy James Cutting is accused in Count I of this indictment by the Grand Jury for the Territory of Alaska, Fourth Judicial Division, of the crime of Grand Larceny committed as follows, to wit:

That the said Percy James Cutting, on or about the 22nd day of October, 1945, in the Fourth Division, Territory of Alaska, then and there being, did then and there wilfully, unlawfully and feloniously take, steal and carry away one (1) Westinghouse electric range, type TH64, Serial No. 830175, frame style No. 1086298, of the value of more than Thirty-five Dollars (\$35.00), the personal property of the United States of America, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Count II.

Percy James Cutting is accused in Count II of this Indictment by the Grand Jury for the Territory of Alaska, Fourth Judicial Division, of the crime of Grand Larceny committed as follows, to wit:

That the said Percy James Cutting, on or about the 24th day of October, 1945, in the Fourth Division, Territory of Alaska, then and there being, did then and there wilfully, unlawfully and feloniously take, steal and carry away one (1) Westinghouse refrigerator, further identified by a refrigeration unit name plate showing model JX-5, style 9630150, Serial No. 4218652, of the value of more than Thirty-five Dollars (\$35.00), the personal property of the United States of America, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Dated at Fairbanks, Alaska, this 23rd day of February, 1946.

/s/ HARRY O. AREND,
United States Attorney.

Witnesses before the Grand Jury:

Andrew Jackson Hall, Thomas E. Murton,
Bernard J. Zobel, Joseph L. Lymp, Charles V.
Cors, Mrs. D. E. Nichols, Virginia Houston,
Erling Nestland, James M. Jorgensen, Mrs.

Ben Grueneich, Leo Hardy, Harold Byrd, Stanley D. Baskin.

Endorsed: A True Bill.

/s/ T. K. DOWNES,
Foreman of Grand Jury.

[Endorsed]: February 25, 1946.

[Title of District Court and Cause.]

ARRAIGNMENT AND PLEA

Came Harry O. Arend, United States District Attorney, representing the Government; came the defendant in person and represented by Warren A. Taylor.

This being the time set for the Arraignment in this cause and the defendant stating that he was ready, upon being asked if Percy James Cutting was his true name, the defendant replied in the affirmative, whereupon the Indictment was read to him and a true copy of the same handed to him.

The defendant waived time for entering his plea and stated that he desired to enter his plea to both counts of the Indictment forthwith.

Upon being asked if he was Guilty of the crimes charged in the Indictment, to wit: Count I, Larceny, and Count II, Larceny, the defendant pled Not Guilty to both Counts, which pleas were duly entered.

Nov. 6, 1946.

Entered in Court Journal No. 34, Page 219.

In the District Court for the Territory of Alaska,
Fourth Judicial Division

Cr. No. 1268

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERCY JAMES CUTTING,

Defendant.

VERDICT No. I.

We, the Jury, duly empaneled and sworn to try the above-entitled cause, do, from the law and the evidence therein, find the defendant, Percy James Cutting, guilty of the crime of larceny as charged in the Indictment in this cause; and we further find that the value of the property so stolen was Less than the sum of \$35.00, lawful money of the United States of America.

Done at Fairbanks, Alaska, this 15th day of November, 1946.

/s/ CHESTER MOYER,

Foreman.

Nov. 15, 1946.

Entered in Court Journal, No. 34, Page 244.

[Endorsed]: Filed Nov. 15, 1946.

In the District Court for the Territory of Alaska
Fourth Judicial Division

Cr. No. 1268

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERCY JAMES CUTTING,

Defendant.

JUDGMENT AND SENTENCE

On this, the 11th day of December, 1946, came the attorney for the Government, and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon a verdict of guilty of the crime of petit larceny, an offense included in the charge of grand larceny set forth in Count I of the Indictment herein, said included offense consisting of taking, stealing and carrying away one (1) Westinghouse electric range, type TH 64, Serial No. 830175, frame style No. 1086298, of the value of less than Thirty-five Dollars (\$35.00), the personal property of the United States of America, on or about the 22nd day of October, 1945, in the Fourth Division, Territory of Alaska; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted and that he be hereby com-

mitted to the custody of the United States Marshal for the Fourth Division of Alaska, and that said defendant be imprisoned for said crime in the Federal Jail at Fairbanks, Alaska, for a period of one (1) year from the date hereof.

Done at Fairbanks, Alaska, this 11th day of December, 1946.

/s/ HARRY E. PRATT,
District Judge.

Dec. 11, 1946.

Entered in Court Journal, No. 34, Page 297.

[Endorsed]: Filed Dec. 11, 1946.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

The Defendant moves the Court to grant him a new trial for the following reasons:

1. That the Court erred in denying Defendant's motion for acquittal in Count One of the said indictment made at the conclusion of the Government's case.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The Court erred in overruling Defendant's objections to the admission of a certain unsigned credit memorandum introduced for the purpose of

establishing ownership in the Plaintiff of the property alleged to have been the subject of larceny by the Defendant.

/s/ WARREN A. TAYLOR,
Of Defendant's Attorneys.

Service of the foregoing motion admitted this 18th day of November, 1946, by receipt of copy thereof.

/s/ HARRY O. AREND,
United States Attorney.

[Endorsed]: Filed Nov. 18, 1946.

[Title of District Court and Cause.]

ORDER

Came Harry O. Arend, United States District Attorney, representing the Government; defense counsel, Warren A. Taylor, was not present.

Mr. Arend presented argument resisting the defendant's Motion for a New Trial and Motion for Arrest of Judgment.

It was Ordered that both motions be denied and the time for passing sentence be set for 10:00 a.m., Wednesday, November 27, 1946.

Nov. 26, 1946.

Entered in Court Journal, No. 34, Page 271.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Percy J. Cutting, Fairbanks, Alaska.

Names and Address of Appellant's Attorneys: Warren A. Taylor, Fairbanks, Alaska; and Stanley J. McCutcheon, Anchorage, Alaska.

Offense: Petty Larceny.

Judgment and Sentence: December 11, 1946.
Sentenced to one (1) year in the Federal Jail.

Now Confined in U. S. Jail at Fairbanks, Alaska.

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated this 11th day of December, 1946.

/s/ PERCY J. CUTTING.

Service of copy acknowledged this 11th day of December, 1946.

/s/ WM. E. BERRETT,
Assist. U. S. Attorney.

[Endorsed]: Filed Dec. 11, 1946.

[Title of District Court and Cause.]

STIPULATION RE PRINTING OF RECORD

It Is Hereby Stipulated by and between the above-named parties, through their respective attorneys, as follows:

1. That in printing the papers and records to be used on the hearing on appeal in the above-entitled cause for consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and cause in full on all papers shall be omitted, except on the first page of the printed record, and there shall be inserted, in lieu thereof, the words "Title of Court and Cause"; and

2. That all endorsements on all papers used as part of said record shall be omitted except the Clerk's filing mark and admission of service.

Dated this 8th day of August, 1947.

/s/ HARRY O. AREND,
United States Attorney.

/s/ WARREN A. TAYLOR,
Attorney for Defendant.

[Endorsed]: Filed Aug. 8, 1947.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF THE DISTRICT COURT TO TRANSCRIPT OF RECORD

I, John B. Hall, Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, do hereby certify that the foregoing, consisting of 82 pages, constitutes a full, true, and correct transcript of the record on appeal in Cause No. 1268 Cr., entitled United States of America, Plaintiff, versus Percy James Cutting, Defendant, and was made pursuant to and in accordance with the Praecipe of the Defendant and Appellant, filed in this action, and is the return thereof in accordance therewith, and

I do further certify that the Index thereof, consisting of page "a", is a correct Index of said Transcript of Record, and that the list of attorneys, as shown on page "b", is a correct list of the attorneys of record; also that the cost of preparing said transcript and this certificate, amounting to \$13.10, has been paid to me by counsel for appellant in this action.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court this 22nd day of September, 1947.

[Seal] /s/ JOHN B. HALL,
Clerk, District Court, Territory of Alaska, 4th Div.

[Endorsed]: No. 11513. United States Circuit

Court of Appeals for the Ninth Circuit. Percy James Cutting, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court for the Territory of Alaska, Fourth Division.

Filed September 25, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the District Court for the Territory of Alaska
Fourth Judicial Division

Cr. No. 1268

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERCY JAMES CUTTING,

Defendant.

TRANSCRIPT OF TESTIMONY AND
PROCEEDINGS

Harry O. Arend, United States Attorney, and William E. Berrett, both of Fairbanks, Alaska, attorneys for the plaintiff.

Warren A. Taylor, of Fairbanks, Alaska, and Stanley McCutcheon, of Anchorage, Alaska, attorneys for the defendant.

The above cause came on regularly for trial at

ten o'clock a.m., Tuesday, November 12, 1946, before the Honorable Harry E. Pratt, Judge of the above-entitled court, at Fairbanks, Alaska, and the following is the transcript of the testimony given and the proceedings had therein.

The Court: This is the time set for the trial of United States vs. Percy James Cutting. Are the parties ready?

Mr. Arend: We are ready, your Honor.

Mr. Taylor: Defendant is ready, your Honor. If the Court please, we would like to have Mr. Stanley J. McCutcheon entered as associate counsel for the defendant.

The Court: He may be so entered.

(Thereupon the jury was duly empaneled and sworn, and counsel for plaintiff made his opening statement before the jury.)

Mr. Taylor: Defendant waives opening statement, your Honor.

The Court: Very well. Call your first witness.

Mr. Taylor: If the Court please, at this time we would ask that the witnesses be put under the rule.

The Court: Very well, all persons who are to be witnesses in this case will remain outside until called to testify.

MAUREEN NICHOLS

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you state your name, please?

A. Maureen Nichols. [1*]

The Court: All persons who expect to be witnesses in this case shall remain outside until called.

Mr. Taylor: If the Court please, we would like to approach the bench for the purpose of making a motion.

The Court: I beg your pardon?

Mr. Taylor: We would like to approach the bench for the purpose of making a motion outside of the hearing of the jury.

The Court: Very well. Come forward then.

(The following motion was made outside of the hearing of the jury:)

Mr. Taylor: If the Court please, we move at this time that Count I of the Indictment be dismissed upon the grounds that the same does not constitute, or, the allegations contained therein do not constitute a cause of action against the defendant; and we make the same motion as to Count II.

The Court: Would you specify in what way they are deficient?

Mr. Taylor: This motion is made upon the

*Page numbering appearing at foot of page of original certified Transcript of Record.

(Testimony of Maureen Nichols.)

grounds that there is no allegation in the complaint, or, in the Indictment, as to the place of the crime, where the crime is supposed to have taken place.

Mr. Arend: We have alleged the jurisdictional situs.

Mr. Taylor: It don't show it was in the possession of the plaintiff, the United States, at the time it was taken.

The Court: The motion is denied. [2]

(The following proceedings took place in the presence of the jury:)

By Mr. Arend:

Q. State your name, please.

A. Mrs. Maureen Nichols.

Q. Where do you reside, Mrs. Nichols?

A. 1223 Denali Apartments, Fairbanks.

Q. Where are you employed?

A. Mail and records section, Post Engineers, Ladd Field.

Q. How long have you been employed in that capacity?

A. Since sometime in March, 1945.

Q. And as such employee, are you in charge of the correspondence that comes and leaves Ladd Field?

A. The Post Engineers' organization, yes.

Q. Only for the Post Engineers' organization?

A. Yes, that's right.

Q. Now, have you checked your files for a letter dated September 19, 1941, addressed to the area engineer at Anchorage by Lieutenant Bush?

(Testimony of Maureen Nichols.)

A. Yes, I have.

Q. Regarding some equipment that included electric ranges and refrigeration? A. Yes.

Q. And what did you find?

A. I was able to locate that letter, it's a carbon copy, with a carbon copy of a shipping ticket attached. [3]

Q. Do you know where the originals of that would be?

A. Well, I would assume that they are in the files of the Engineers at Anchorage.

Mr. Taylor: If the Court please, I move that the answer be stricken on the grounds that the witness is assuming something.

The Court: Motion denied.

Q. What you found was a copy of the letter?

A. Yes.

Q. When would that letter have been placed—this copy, when would it have been placed in your files and records?

A. All correspondence is placed in the files either the day immediately, the day following when it was sent out, or the day after that, depending on how much mail went out at the time.

Q. Do you have a place to—

Mr. Taylor: Just a moment, I object to any further examination on this copy until a satisfactory explanation is made as to where the original is. I think the original is the best evidence. A proper foundation has not been laid for the examination in regard to the copy.

The Court: That is a correct statement of the

(Testimony of Maureen Nichols.)

law. Copies are not admissible until it is shown that the original is not available.

Mr. Arend: Well, your Honor, with this witness here I [4] would like to have the papers that she found, at least marked for identification. I may later be able to——

The Court: It may be marked.

Q. (By Mr. Arend): Is this the copy of the letter you have been talking about? A. Yes.

Q. And a copy of the ticket, shipping ticket?

A. Yes, that is it.

Q. And may these be removed from this file?

A. Well, they aren't ordinarily removed. You may have the whole file.

Mr. Arend: We may have the whole file. I am only offering it as to these two items, your Honor, for identification.

(Thereupon a carbon copy of a letter from James D. Bush, Jr., to Area Engineer, Anchorage, Alaska, dated September 19, 1941, was marked as Plaintiff's Identification 1-A. The shipping ticket attached thereto was marked Plaintiff's Identification 1-B. The documents are in words and figures as follows:)

“RMG/mg

“September 19, 1941.

“Subject: Shipping Ticket.

“To: Area Engineer, U. S. Engineer Office,
Anchorage, Alaska.

“1. There is enclosed true copy shipping ticket dated July 30, 1941, transferring to the Quarter-

(Testimony of Maureen Nichols.)

master various property which has been installed in permanent buildings Nos. 7, 9, 10, and 11. [5]

"2. It is not know what disposition was made of the original shipping ticket but the Post Quartermaster has entered the various items on his property records and has assumed control of them.

JAMES D. BUSH, JR.

1st Lt., Corps of Engineers,
Resident Engineer.

"Incl. (trip): Shipping ticket"

"Consignor: The District Engineer, Seattle, Washington.

"Date Shipped or Delivered, July 30, 1941.

"Ship to—Quartermaster, Ladd Field, Fairbanks, Alaska. Authority or Req. No. AR 30-1435. Transportation Cost of..... Chargeable to..... P/A No.

Quantity "Ordered	Stock Shipped No.	Article	Unit	Unit Cost	Total Cost
52		Chairs, Arm, Wooden	Ea.	7.65	\$ 397.80
156		Chairs, side, wooden	Ea.	5.75	897.00
16		Extinguishers, Fire 1 gal.	Ea.	31.00	496.00
17		Extinguishers, fire, 2½ gal.	Ea.	7.68	130.56
34		Ranges, electric, Model TH-64	Ea.	53.00	1,802.00
34		Refrigerators, electric, Model E-8-40	Ea.	165.00	5,627.00

"This is a true copy

"W. H. HAMMOND,
2nd Lt. A. C.
Asst." [6]

(Testimony of Maureen Nichols.)

Q. (By Mr. Arend): Are this letter and shipping ticket in the same condition as they were when you took them out of your files and records?

A. Yes, they are.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mrs. Nichols, how long have you had these records in your possession?

A. Well, they have been in the office ever since I have been there. The letter was written in 1941. I know nothing of it previous to the time I was——

Q. (Interrupting): How long have you been in that office? A. Since March, 1945.

Q. Mrs. Nichols, did you testify before the grand jury? A. Was that some time last year?

Q. Yes. A. Yes.

Q. In this same case? A. Yes.

Q. Now, when did you first run across this exhibit here which is marked "Identification 1-A?"

A. I believe it was sometime in January, 1945, that we first located it.

Q. Had you been looking for that before that time? [7] A. No, I hadn't.

Q. And did you testify before the grand jury that you didn't have any records on that particular refrigerator?

A. I knew at the time I testified that we had this correspondence in the file.

Q. I don't believe that quite answers the ques-

(Testimony of Maureen Nichols.)

tion, Mrs. Nichols. Would you answer the question as I put it to you?

A. Well, I don't understand.

Q. I asked if you testified that you had no records pertaining to this refrigerator and electric range.

A. I didn't testify to that.

Q. To the grand jury?

A. I didn't testify that I didn't, no, because I knew when I went to court that this material was in the file.

Q. You had seen it in the file, had you?

A. Yes, I had.

Q. And did you produce it at that time?

A. No, I did not.

Mr. Taylor: That is all.

Mr. Arend: That is all.

(Witness excused.) [8]

J. M. JORGENSEN

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. J. M. Jorgensen.

Q. Where is your residence, Mr. Jorgensen?

A. In Fairbanks.

Q. Where are you employed?

(Testimony of J. M. Jorgensen.)

A. Ladd Field.

Q. How long have you been employed at Ladd Field? A. Since June, 1941.

Q. What kind of work have you done there since then?

A. Chief electrician foreman.

Q. In the course of your employment at Ladd Field, Mr. Jorgensen, have you had occasion to handle Westinghouse Electric Ranges?

A. I have.

Q. And have you had occasion to handle Westinghouse electric refrigerators? A. I have.

Q. When did you first handle electric ranges and refrigerators at Ladd Field of the Westinghouse make?

A. In 1941; in the fall—in the winter of 1941. [9]

Q. And what was your experience in that regard? A. Maintenance and repair.

Q. What type and what number of each item did you handle in that year?

A. What number? What do you mean by that: by quantity?

Q. Yes. A. Well, I couldn't say.

Q. Do you know where these items came from: the ranges and refrigerators? A. No, sir.

Mr. Taylor: Just a moment. I object to the question. There is no specific ranges or refrigerators mentioned. We don't know whether he means these particular ones that are in the courtroom now or others.

(Testimony of J. M. Jorgensen.)

The Court: He answered that he didn't know.

Q. Mr. Jorgensen, do you know if any of those ranges or refrigerators that you handled there in 1941 ever went to Satellite Field?

A. What?

Q. Do you know if any of them ever went to Satellite Field? A. During that year?

Q. Or at any time subsequent.

A. I do not know.

Q. You do not know.

Mr. Arend: If the Court please, we would like to have [10] these items marked for identification.

(Thereupon an electric stove was marked Plaintiff's Identification No. 2 and an electric refrigerator was marked Plaintiff's Identification No. 3 by the clerk of the court.)

Q. (By Mr. Arend): Mr. Jorgensen, will you step down here, please, and examine Government's Identification No. 2 and state, if you can, whether or not you handled that type of range at Ladd Field. A. The type is similar.

Q. The type is similar. And will you look at Government's Identification No. 3 and state whether you have handled that type of refrigerator at Ladd Field?

A. From the external appearances, it is the same.

Q. Now, do you have any personal knowledge of your own of the transfer of any of either this type of range or this type of refrigerator from Ladd Field to Satellite? A. No, sir.

Mr. Arend: You may cross-examine.

(Testimony of J. M. Jorgensen.)

Cross-Examination

By Mr. Taylor:

Q. Mr. Jorgensen, can you identify either plaintiff's identifications 2 or 3 as any range or refrigerator that has ever been at Ladd Field?

A. I could not do that.

Mr. Taylor: That is all.

(Witness excused.) [11]

RICHARD F. COLEMAN

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Richard F. Coleman.

Q. Where do you reside, Mr. Coleman?

A. Germantown, Ohio.

Q. What is your occupation at the present time?

A. I am a government employee at Wright Field.

Q. Were you ever stationed as a soldier at Ladd Field?

A. I was an army officer at Ladd Field for three years, from February of 1943, until the first of February of 1946.

Q. What was your rank at that time?

(Testimony of Richard F. Coleman.)

A. When I arrived at Ladd Field I was a first lieutenant. Later that same spring, of 1943, I made captain, and then at the time I left Ladd Field I was a major.

Q. Mr. Coleman, will you step down here and examine Government's Identification 2, an electric range? Will you just step down and examine that? Examine it carefully, as thoroughly as you like. (The range was examined by the witness.) Have you ever seen that range before?

A. I have seen the range before. [12]

Q. And on what do you base that statement?

A. I base the statement on the grounds that with the copy of the memorandum, credit memorandum receipt that I hold, that has the serial number on it; that that serial number and model number were carefully checked at the time I signed the original issue memorandum receipt in July of 1943.

Q. And do you have that receipt with you?

A. This is a copy of a credit memorandum receipt that was brought to me in my office in Air Corps Supply early in '44, in January of 1944.

Mr. Arend: I would like to have it marked for identification, if you will just hand it to the clerk there, please.

(Thereupon Memorandum Receipt, dated January 1, 1944, was marked by the clerk of the court as Plaintiff's Identification No. 4 and is in words and figures as follows:)

(Testimony of Richard F. Coleman.)

“Memorandum Receipt

Voucher No.....

Sheet No.....

No. of Sheets.....

Credit

Date: 1 January 1944

“Turned in by: Capt. Richard F. Coleman

“Place: Ladd Field, Alaska. Property: Post Engineer (Utilities)

“Quantity	Stock No.	Nomenclature	Unit
-----------	-----------	--------------	------

1		Range, electric, Model TH-64, Serial 830175	only
---	--	--	------

(Formerly located in Apt. 11,
NCO 14) [13]

* * * * *

“Account No.....Received the above articles.

RALPH F. GALLOGLY,
Lt. Col., C. E. Post
Engineer (Utilities)”

(Testimony of Richard F. Coleman.)

Q. (By Mr. Arend): And what transaction does that memorandum receipt represent?

A. At the time I moved out of apartment 11 in N.C.O. 14—I moved out on the 1st of December of 1943, and at that time the stove was left in that apartment. We didn't move things like that ourselves and actually take them over to the Engineers and turn them in, because they were too heavy for a person to move in that respect, so that all I did was to notify the Engineers that I was not using the stove any longer and desired to be released from the debit memorandum receipt which I had signed in July.

Q. Do you have the debit memorandum receipt that you signed in July of '43?

A. I do not. At the time I left Ladd Field, the first of February of this year, I had a clearance from all supply officers on the base, and subsequent to that time I discarded a lot of the paper work that I had accumulated while at the Field, and I do not have that issue slip.

Mr. Arend: I would like to have this marked for identification.

(Thereupon a Memorandum Receipt dated July 8, 1943, was [14] marked as Plaintiff's Identification No. 5 by the clerk of the court and is in words and figures as follows:)

(Testimony of Richard F. Coleman.)

“Memorandum Receipt

Voucher No.....

Sheet No.....

No. of Sheets.....

“Debit

Date: July 8, 1943

“Issued To: Capt. Richard F. Coleman

“Place: Apt. 11, NCO 14, Ladd Field, Alaska

Property: Post Engineer (Utilities

“Quality Stock No. Nomenclature Unit)

1	Refrigerator, Westinghouse, Model E-5-40 Style 991321, Serial 882909, Post Engineer No. 14	ea.
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“R * * * * *

Received the above articles.

OK /s/ RICHARD F. COLEMAN,
Capt. A. C.”

“Account No.....

Q. (By Mr. Arend): Now, I show you Plaintiff's Identification No. 5 and ask you to examine that. Have you seen that before?

A. This is my handwriting and my signature.

Q. That is your signature. And when did you place your signature on that paper?

A. In July of 1943, as the paper is dated July 8

(Testimony of Richard F. Coleman.)

of 1943. Now, that isn't the time that I started using the stove. I started using the above in approximately——

Mr. Taylor (Interposing): If the Court please, I object to the witness testifying here unless in response to a direct question. There is a lot of voluntary information. Testimony [15] is being volunteered here and not asked for.

The Court: Very well. Objection sustained.

Q. Just answer the questions that I ask. Now, referring again to Identification No. 4 in your lap there, is that signed by anyone?

A. No, it is not.

Q. Can you explain the reason for an absence of a signature there?

A. After I had repeatedly asked in Post Engineers for a receipt for this stove——

Mr. Taylor (Interposing): Just a moment, Mr. Coleman, I object to any reference to this particular copy—he said it was a copy—until the proper foundation is shown for the use of it for questioning this witness. He says it isn't signed. We don't know just exactly what it is.

The Court: Objection overruled.

(The question and answer were read by the reporter.)

A. An employee of the engineers—I don't remember who—came into my office in Air Corps Supply and handed me this unsigned memorandum receipt. At the time I questioned it, wanting a signed

(Testimony of Richard F. Coleman.)

receipt and tried to get a signed memorandum receipt. I know that I didn't accept this paper as being a release for me since it wasn't signed. However, I never was able to—I either did not get a signed copy or let it drop, after contacting the Engineers later and their office telling me I was no longer charged for the stove. [16]

Q. Now, that identification No. 4, is it a carbon copy of an original?

A. I would say that it is an original copy.

Mr. Arend: If the Court please, we offer Plaintiff's Identification No. 4 in evidence which is the memorandum dated January 1, 1944—

Mr. McCutcheron (Interposing): Let us have a look at it.

Mr. Taylor: —which the witness testified was given to him after he returned the stove.

Mr. Taylor: We object to the introduction of it in evidence upon the ground that it isn't signed. The witness stated that it was a copy. It certainly would not be binding on anybody. The witness has testified that he didn't feel it released him whatsoever.

The Court: Mr. Coleman, at the time you received this credit memorandum in January of 1944, you had an electric range that you had received from the government? Had you had it in your possession?

A. At the time I got this receipt, I no longer had it.

Q. Where was it?

A. At the time I moved from the apartment in N.C.O. 14, apartment 11, on the 1st of December of

(Testimony of Richard F. Coleman.)

1943, the range was left there, and to my knowledge I never saw the range after that.

Q. The Court: How do you know that this receipt here bears the number of the electric range that you had? [17]

A. At that time I had the issue slip on the range and did check the serial number on the turn-in slip with the serial number on the issue slip that I had signed, and they were one and the same; and I had checked the serial number and style before I signed the original issue.

The Court: You had checked the number on the issue slip with the stove and found it correct?

A. Yes, sir.

The Court: And then you checked the number on this receipt with the——

A. (Interposing): With the issue slip.

The Court: ——with the number of the issue slip which you still had?

A. Yes.

Mr. Taylor: If the Court please, I want to make that same objection upon the further ground that the proper foundation has not been laid to show the time and the place and who this receipt was executed by.

The Court: Objection overruled. It may be admitted.

(Thereupon Plaintiff's Identification No. 4, hereinabove set forth, was marked by the clerk of the court as Plaintiff's Exhibit A.)

Q. (By Mr. Arend): Mr. Coleman, at the time

(Testimony of Richard F. Coleman.)

you were issued an electric range as you have testified, were you issued any other electrical appliances?

A. I was also issued an electric refrigerator—Westinghouse.

Q. On this Plaintiff's Identification No. 5, did you find any reference to the refrigerator that you were issued?

A. Yes, sir.

Q. And did you check with the refrigerator itself, the number on there?

A. Before I signed this paper, I checked that serial number on the refrigerator, yes, sir.

Q. Are you able to identify this refrigerator as the refrigerator that you had?

A. I have not looked at this refrigerator.

Q. Would you take a look at it?

(The refrigerator was examined by the witness.)

A. This the type of refrigerator that I had. I don't know where the serial number is on it.

Q. That is as much as you can say: That is the type you had?

A. Yes. As there is no serial number on it, that would be as much as I could say.

Q. All right. Now, in the receipt, government's Identification No. 5, that you signed on July 8, 1943, can you account for the line drawn through the reference to the electric range? Do you yourself know why that has been scratched out?

A. No, sir, I do not know.

Q. You do not know?

(Testimony of Richard F. Coleman.)

A. This was done at some time subsequent to the time I signed the paper. We could make a conjecture, but that is not——

Q. (Interposing): No. We don't want you to conjecture.

Mr. Arend: You may cross-examine the witness.

Cross-Examination

By Mr. Taylor:

Q. Mr. Coleman, could you — were you — would you be able to identify that stove, the electric range over there, without the reference to this so-called credit receipt that you have?

A. By referring to the original memorandum receipt that I signed which, I believe, has been introduced into evidence before I can identify this as the same stove?

Q. The original memorandum receipt.

A. The one that carries my signature?

Mr. Arend: It has not yet been introduced as an exhibit, however.

Q. Well, I believe in identifying this stove, you referred to this receipt, did you not?

A. I refer to this in conjunction with the issue copy that I had in my possession at that time.

Q. I mean your identification of it just a short time ago as the stove that you had, there was no way you could identify that range unless you referred to this—you might call it a blank receipt—it that right?

(Testimony of Richard F. Coleman.)

A. The serial number on this so-called receipt, this receipt that they gave me, which is as much as they ever gave me, is the same serial number that was on the copy of the issue slip that I had, and I know that I cross-referred the serial numbers at that time.

Q. But I mean in going to that stove, could you identify that stove without referring to the credit memorandum?

A. Without reference to this credit memorandum?

Q. Yes.

A. Or the other exhibit. My memory didn't say that serial number, no. I would have to refer to a written piece of paper because I wouldn't remember the serial number or style of a stove that I used in 1943.

Q. There is no distinguishing marks on that stove by which you could identify it, then?

A. No, sir.

Q. It was a stove similar to the one you had?

A. It is a stove similar to what I had.

Q. Now, who accepted this credit memorandum or credit receipt? Who should that have been signed by, Mr. Coleman?

A. That should have been signed by some employee of the Post Engineers that had knowledge that that stove was turned back in.

Q. Do you know what employee that should have been, or an officer? Would it be an officer or an employee?

(Testimony of Richard F. Coleman.)

A. Well, it would be someone signing for Colonel Gallogly who was the Post Engineer at that time, but I wouldn't say who would have signed it.

Q. Were those forms, those credit receipts, were they readily available to anybody who wanted to pick them up around post headquarters, or around the Engineers' office?

A. Not having been around the Post Engineers' office, I can't say.

Q. But you did eventually accept that as a final release, then, of your obligation to the government for that range?

A. No, I am not saying that, and I was not satisfied at the time, as I mentioned in my previous testimony. I can't trust my memory so far as knowing whether I later got a signed copy or whether by checking with the property office of the Engineers later and asking them what I was charged with and they definitely found no record of my being charged any more with that stove.

Q. Now, I am not familiar with the army procedure, but, when you are discharged, is it a fact then that you get a release if you have been charged with government property, which I presume all army officers are? Am I right? A. Yes.

Q. When you are discharged or leave, you get a clearance from some superior officer, or supply officer, or quartermaster officer; is that right?

A. Yes.

(Testimony of Richard F. Coleman.)

Q. And then that is considered as a release of all claims by the government against you?

A. Yes, sir. [22]

Mr. Taylor: That is all.

Mr. Arend: That is all.

(Witness excused.)

Mr. Arend: Your Honor, my next witness is not in chronological order, but he is an important employee at Fort Richardson and is anxious to get back; he can get army transportation back. I would like to call him out of order and connect his testimony up later if I may.

The Court: Very well.

JAMES WISE

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. James Wise.

Q. Where do you reside, Mr. Wise?

A. Headquarters, Alaskan Department.

Q. Anchorage, Alaska?

A. Anchorage; that's right.

Q. Were you ever employed at Satellite Field near Fairbanks, Alaska? [23]

A. Yes, sir, I was.

(Testimony of James Wise.)

Q. When were you there?

A. November, 1943, to October, 1944.

Q. And what position did you hold there?

A. I was resident engineer.

Q. While at Satellite Field, did you have a lady secretary named June Peterson?

A. Yes, I did.

Q. While she was at Satellite Field, did you help her to get some electrical kitchen equipment?

A. I did.

Q. Will you state what you did in that respect?

A. All it required was a phone call to Ladd Field requesting what she wanted.

Q. And what was it you requested?

A. At the time it was an electric stove, electric refrigerator, and a few other things, household fixtures.

Q. Do you know what company made the range and refrigerator? A. No, I do not.

Q. You do not. Will you please step down and examine Government's Identification 2 and 3 there, a range and refrigerator? (The witness examined the range and refrigerator.) Can you positively identify those as having been ordered by you from Ladd Field? A. No, sir, I can't. [24]

Q. Can you state whether they resemble the items you received? A. Well, it is——

Mr. Taylor (Interposing): Well, if the Court please, I object to the question upon the ground that it calls for a mere conjecture on the part of the witness.

(Testimony of James Wise.)

The Court: I think you should be more definite. "Resemble" is a pretty broad term.

Q. (By Mr. Arend): Do they look like the items you ordered from Ladd Field?

Mr. Taylor: We object for the same reason, your Honor. The question calls for the same kind of an answer—conjecture.

Q. Then I will ask him, first: Do you know whether a range and refrigerator were delivered in compliance with your order to June Peterson?

A. Yes, sir, they were.

Q. Can you state whether these are the items: Identification 2 and 3?

A. I can't state that. I do know they were a standard make. The government contracted certain——

Mr. Taylor (Interposing): I move to strike that answer as not responsive to the question.

The Court: It may be stricken.

Q. (By Mr. Arend): What color were they?

A. I believe they were white, white enamel. [25]

Q. Did you see the range and refrigerator you ordered for Miss Peterson in her apartment at any time?

A. Yes, I have seen it there.

Q. Did you sign a property receipt for these two items?

A. I am not certain whether I signed a memorandum receipt for them or not, sir. I generally had to sign for everything that came out or someone signed for me and I checked it.

Q. Do you know who delivered the range and refrigerator to Miss Peterson?

(Testimony of James Wise.)

A. It was my property man, Mr. Zobel.

Q. And can you identify the place occupied by Miss Peterson for the jury? What kind of a place was she living in?

A. It was a stout house. We had several employees——

Q. (Interposing): Do you know the number of the stout house? A. No, sir, I don't.

Q. Do you know what happened to the range and refrigerator that were delivered to June Peterson?

A. No. After she left, other people used it. Several families would use the refrigerator and stove.

Q. Do you know Mr. Cutting?

A. Yes, I do.

Q. Did you ever talk to him about the range and refrigerator while they were still at Satellite Field?

A. Prior to my departure, when I was preparing to have all——

M. Taylor (Interposing): If the Court please, I object [26] to the question on the ground that the proper foundation has not been made as to where and when and who was present when the conversation took place.

Mr. Arend: Well, the question first calls for "yes" or "no."

The Court: Just answer the question.

Q. (By Mr. Arend): Did you, at any time, talk to Mr. Cutting regarding the range and refrigerator that were delivered to Miss Peterson while they were still at Satellite Field?

A. Yes, I did speak with him.

(Testimony of James Wise.)

Q. When was that?

A. A few days before my departure. It was some time around the first week of October in 1944.

Q. Who was present there?

A. I believe just the two of us were in my office. He came to my office and spoke to me.

Q. What was said at that time?

A. I was asked whether or not he would be given permission to utilize the range and refrigerator and whether or not they should be retained at the Field.

Q. What did you say?

A. I just mentioned so long as the paper work was taken care of, it was all right to leave them at Satellite Field.

Q. What did you mean by "paper work?"

A. They were charged to me. All the property out there was [27] charged to me, and the only way I could take it off my record was to send it back and get a clearance slip on it or transfer it to somebody else and have them be responsible for it.

Q. Could you transfer it without sending it back to Ladd Field?

A. Yes, sir.

Q. Did you make such an arrangement for Mr. Cutting?

A. That was the intention, yes. I believe I passed it on to my property man to take care of the paper work.

Q. Do you know, of your own knowledge, whether Mr. Cutting ever received authority from Ladd Field to retain the items at Satellite?

(Testimony of James Wise.)

A. I don't remember ever seeing any paper work, if that is what the question is.

Q. Did you have a conversation with Mr. Cutting regarding the range and refrigerator in June, 1945?

A. On one of the trips that Mr. Cutting made to the office—he stopped to see me—I believe in one conversation I asked him if he ever had the paper work taken——

Mr. Taylor (Interposing): Just answer that “yes” or “no.” A. Yes, we did.

Q. Where was that?

A. It was in my office at Fort Richardson.

Q. Can you place the time more definitely? [28]

A. No. I believe he could most likely give the time. It was on one of his trips down there. He hadn't been transferred to Fort Richardson. I believe he was on a one or two day temporary duty.

Q. Who was present when you had this conversation? A. In my office?

Q. Yes.

A. There were two engineers in the office at the time. I don't know whether they heard the conversation or not.

Q. You don't know? A. No.

Q. Do you know their names?

A. Well, one was Mr. Kukkula; he was one of my assistants, and I believe that is the only persons that were in the office at that time, and the secretary.

(Testimony of James Wise.)

Q. There was no other woman?

A. I believe the secretary.

Q. What was said at that time? What conversation did you have relative to the range and refrigerator?

A. I asked him if the paper work had been straightened out, and he replied it had pertaining to the stove and the refrigerator.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.) [29]

HAROLD BYRD

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Harold Byrd.

Q. Where do you reside, Mr. Byrd?

A. In Fairbanks.

Q. Where are you employed?

A. Ladd Field.

Q. What is your position out there?

A. Auditor for the Resident Engineer.

Q. How long have you been employed at Ladd Field in that capacity?

A. Since the first of August, this year.

(Testimony of Harold Byrd.)

Q. Prior to that, what office did you hold?

A. I was the chief clerk for the Post Engineer.

Q. Would that be in the Post Utilities?

A. The Post Utilities.

Q. Are you familiar with the mode of handling government property at Ladd Field; that is, to whom such property comes consigned and any changes that have been made since the beginning of Ladd Field in that respect? Just yes or no.

A. Yes. [30]

Q. Now, will you describe to the jury here what records are kept when property is received at Ladd Field for the government?

A. Generally when property is received at Ladd Field, there is a shipping ticket—that is the title of it, “shipping ticket”—that would be received from the agency from which the property had been shipped, and, when it is received here, a receiving report would normally be made by the receiving agency on the base. Then, after that, the property would be recorded on, normally would be recorded on a property record card.

Q. When Ladd Field was first started, what agency received the shipments of property for the use of Ladd Field?

A. Pardon me, at what time?

Q. When Ladd Field was first started.

A. Well, it was first started under the construction quartermaster. That was during the construction, and I believe all of the original materials for building the base were consigned to the constructing quartermaster.

(Testimony of Harold Byrd.)

Q. Does he still receive all the property for Ladd Field?

A. No. Since then, various agencies on the base have property which is peculiar to their own type of business consigned to them individually, and they receive it themselves; such as, for instance, the engineers, or the quartermaster or the ordnance department would receive property consigned to them at the corps of engineers or ordnance.

Q. Now, can you state as to whether or not Westinghouse electric ranges and refrigerators were received at Ladd Field in 1941? [31]

A. In 1941 that would have been shipped from, possibly from the quartermaster depot, or perhaps from a quartermaster agency outside, who would have purchased it for the constructing quartermaster here.

Q. And does the constructing quartermaster still have charge of such refrigerators and ranges here at Ladd Field? A. No.

Q. Who has now?

A. The Engineers, that is, the Post Engineers, formerly called Utilities' Engineer.

Q. When was that change made?

A. It was made early in 1942.

Q. Are you familiar with the buildings at Ladd Field originally numbered 7, 9, 10, and 11?

A. Yes, I am.

Q. Are they identified by any other numbers?

A. Yes.

(Testimony of Harold Byrd.)

Q. Will you state what those other numbers are for each one?

A. Well, 7 is identified both as building 107 and as N.C.O. 14, meaning non-commissioned officers' quarters with fourteen family units; and 9 is now 109; it is also called N.C.O. 12, meaning that it contains twelve non-commissioned officers' family units. What was the other numbers?

Q. 10 and 11 are the other two.

A. Oh, 10 is the commanding officer's quarters out there and 11 [32] is called Officers' Row; it is now No. 111.

Q. Have you checked the records at Ladd Field in the property and housing sections of the U.S.-E.D., that is, the United States Engineers?

A. That's right. I have.

Q. Have you checked them to determine whether there are any records of ownership of a Westinghouse electric range, type TH 64, Serial No. 830175?

A. Yes.

Q. What did you find in that respect?

Mr. Taylor: If the Court please, I object to the question. The record speaks for itself.

The Court: Objection sustained.

Q. Did you know Colonel B. F. Hatch while he was at Ladd Field?

A. Yes.

Q. Do you know when he terminated at Ladd Field or was transferred from Ladd Field?

A. Yes. He left Ladd Field in about the first of September.

Q. Of what year?

A. Of 1945.

(Testimony of Harold Byrd.)

Q. And did you know a Colonel, or a Major McGuire? A. Yes.

Q. At Ladd Field? A. Yes.

Q. What was his full name, do you know? [33]

A. I do not know.

Q. Was there only one Major McGuire?

A. So far as I know.

Q. Where was he stationed?

A. He was stationed first at Ladd Field in the supply and service office and later as commanding officer at Twenty-Six Mile.

Q. I show you Plaintiff's Identification 5 and ask you to examine that, please, and state whether you have ever seen that before.

A. Yes, I have seen it.

Q. How do you know?

A. Why, my initial is on the back of it. I was requested to search the records for an electric range at one time last winter and did so, and this is one of the papers that I ran across.

Q. Where did you find that paper in the records?

A. I found it amongst the memorandum receipts which had been transferred from the post engineer's utilities organization to the supply section of the engineers at Ladd Field.

Q. And is it in the same condition now as it was when you saw it there in the files?

A. Well, yes, except for this stamp on the front.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.) [34]

BERNARD J. ZOBEL

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you state your name, please, Mr. Zobel?

A. Bernard J. Zobel.

Q. Where do you reside at the present time?

A. At Anchorage.

Q. What is your occupation?

A. I am employed by the resident engineer at Ford Richardson.

Q. Were you ever employed at Ladd Field?

A. Yes, sir.

Q. And at Satellite Field? A. Yes, sir.

Q. During what period of time?

A. I think it was about the last of March that I came to Satellite Field.

Q. What year? A. '43.

Q. And then how long were you there?

A. I am sorry. I believe that was '44, and I was there till—I am sorry; it was '43, and in '44, about the first of the year, I transferred back into Ladd Field. [35]

Q. In what capacity were you employed during the spring of 1944?

A. As a property clerk for the resident engineer.

Q. At Satellite? A. Yes, sir.

Q. What was the nature of your occupation and your first duties?

(Testimony of Bernard J. Zobel.)

A. Well, to watch out for materials that came onto the job and to tally in the materials before they were used on the job.

Q. Do you know James Wise? A. Yes, sir.

Q. And June Peterson? A. Yes, sir.

Q. Did you have any dealings with her sometime in the spring of 1944?

A. Well, Mr. Wise was the resident engineer and as such was my employer, and Miss Peterson was his secretary and more or less the office manager, you would say, at the time, and so we answered somewhat to her also.

Q. And what dealings did you have with them in the spring of 1944 in connection with your work and relative to an electric range and electric refrigerator? Just tell what you did, not what was said, but just what you did.

Mr. Taylor: Well, if the Court please, we object to the question upon the ground unless it is directed to a specific refrigerator and electric range.

The Court: You can move to strike it out if it isn't [36] tied up with this refrigerator and range. Overruled.

A. I went into Ladd Field with a flat bed truck, pickup a refrigerator and an electric range and took them out to Satellite Field.

Q. Did you have any paper records?

A. I don't recall that I did.

Q. And where did you deliver them at Satellite Field?

A. I delivered them to the resident engineer's office, at the rear, rather, of the resident engineer's

(Testimony of Bernard J. Zobel.)

office, to a stout house which was then used by Miss Peterson as her quarters.

Q. At whose direction did you place them in the stout house?

A. I believe Miss Peterson. Either she or Mr. Wise. Miss Peterson, I believe it would be.

Q. You stated there were no paper transactions connected with the delivery of these items?

A. I do not recall that there was, no.

Q. What make of range and refrigerator were they? A. That I don't recall now.

Q. Was it ordinary practice not to have any paper records of such a transaction?

A. No. Ordinarily it would not be.

Q. Do you know the serial number of either of these items, the range or the refrigerator?

A. I do not.

Q. Do you recall any other identifying marks on either of the [37] items? A. No, sir.

Q. Will you please step down and take a look at Government's Identifications 2 and 3, the range and the refrigerator back there, please? (The witness examined the range and the refrigerator) Did you yourself ever use the range and refrigerator that you delivered to the stout house of June Peterson?

A. Well, I was one of a party of possibly four or five that did. Several of us did some cooking out there. I didn't happen to do any cooking myself. We had a chap who usually did that, but we cooked more or less coffee and that is the extent of my——

(Testimony of Bernard J. Zobel.)

Q. (Interposing): Can you state whether or not these are the range and refrigerator?

A. No, sir.

Q. That you delivered to Satellite Field?

A. I cannot.

Q. You may take the stand now. Now, will you state to the jury, if you know, how personal property can be taken, personal property of an individual working out there, can be taken off Satellite Field? Can you explain that to the jury?

A. Well, it is usually done with——

Mr. Taylor: (Interposing): Just a moment. We object.

Q. Just yes or no. A. Yes. [38]

Q. Now, will you explain to the jury the procedure?

A. Well, the government has a form that is called a tally-out form, which was used for items that was taken from one project to another or to town as the case may be.

Q. Do you know Mr. Cutting, the defendant here? A. Yes, sir.

Q. Did you ever discuss with him the range and refrigerator that you delivered to June Peterson's stout house at Satellite Field? Just "yes" or "no."

A. No.

Mr. Arend: You may cross-examine.

Mr. Taylor: If the Court please, I move to strike all of the testimony of the witness now on the stand upon the ground that there is no identification of the range, no connection with the crime

(Testimony of Bernard J. Zobel.)

charged in the Indictment, and it has no probative value upon the issues now before the Court.

The Court: Well, I think that if at the close of the government's case that is still the situation, you may renew your motion. We will let it stand until that time.

Mr. Taylor: You reserve the ruling on the motion, then?

The Court: No, I am not taking it under advisement. I just said your motion is too early.

Mr. Taylor: No cross-examination, Mr. Zobel.

(Witness excused.) [39]

CHARLES V. CORS

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Charles V. Cors.

Q. Where do you reside, Mr. Cors?

A. 1818 El Comino, Redwood City, California.

Q. Were you ever employed at Satellite Field?

A. Yes, sir, I was.

Q. When were you there? A. '45.

Q. Were you there during the spring of '45?

A. Yes, sir.

Q. What was your occupation at that time?

A. Carpenter.

(Testimony of Charles V. Cors.)

Q. Do you know the defendant, Mr. Percy James Cutting, sitting here? A. I do.

Q. Do you know Joseph Lymp?

A. Yes, I do.

Q. Andrew Jackson Hall? A. Yes. [40]

Q. Now, I call your attention to a day on or about the 18th of May, 1945, at Satellite Field. Do you remember having anything to do on that day with an electric refrigerator and an electric range? Just "yes" or "no." A. Yes.

Mr. McCutcheon: We object to it as leading, your Honor.

The Court: It is preliminary. Objection overruled.

Q. Just "yes" or "no." A. Yes.

Q. Please state to the jury what you had to do with the range and refrigerator on that day.

A. In my own words?

Q. Yes.

Mr. Taylor: If the Court please, I object to the form of the question as not proper. I don't think the proper foundation has been laid to go into it any further.

The Court: Please read the question and answer.

(The question and answer were read by the reporter.)

The Court: Objection overruled.

Q. Please state what you had to do with a range and refrigerator on that day. Just tell the jury in your own words.

(Testimony of Charles V. Cors.)

A. Mr. Lymp came into the shop and asked me if I would help him load some things on the truck, and I said I would; so we proceeded to one of the stout houses on Satellite Field and loaded this range and refrigerator and started to town. Just four miles from Twenty-Six Mile, we pulled into a gravel dump and unload the stove and refrigerator from this truck onto a red pick-up, and the pick-up proceeded to town.

Q. Do you know who belonged to the stout house, or, rather, to whom the stout house belonged from which you took the refrigerator and range?

A. Well, it had been issued to Mr. Cutting.

Q. Now, did you ever discuss this range and refrigerator, or, did you discuss this range and refrigerator with Mr. Cutting at that time, on that day?

A. Yes, I did.

Q. Who was present?

A. The parties concerned.

Q. That is just you and Mr. Cutting?

A. No. Joe Lymp.

Q. Joe Lymp. What was said?

A. I said, "Sandy,"—that is his nickname—I asked him, "what is the score, Sandy?"—which, of course, is quite natural—and Sandy said, "I bought it from M. K." They were selling a lot of things out at the field at that time, and that was all. I let it go at that.

Q. Did you see the electric range and refrigerator at any time after you made this transfer at the gravel pit?

(Testimony of Charles V. Cors.)

A. Not that I could positively identify, no, sir. I never did see it again after that, technically, not that I could identify. [42]

Q. Will you step down and examine Government's Identification 2 and 3, the range and refrigerator?

A. Do you want me to take a look at it?

Q. Yes, just look them over. Are they the range and refrigerator that you helped Joe Lymp take from the stout house?

A. That I couldn't say, sir.

Q. You couldn't say? A. Not positively.

Q. Not positively? A. No, sir.

Q. Did you ever do any work for Mr. Cutting himself, personal work? A. Yes, I did.

Q. Where at?

A. At the Mount McKinley Ice Cream Company.

Q. What was the nature of the work you did there? A. Carpenter work.

Q. Carpenter work. Did you ever see Government's Identification 2 and 3 up there in the apartment, or articles resembling them?

A. Articles resembling them.

Q. Just "yes" or "no", now, have you checked the records at Ladd Field in the property and housing sections of the U.S.E.D. to determine whether there are any records of ownership of a Westinghouse electric range, Type TH 64, Serial No. 830175? [43]

Mr. McCutcheon: We object to it as not the best evidence, your Honor.

(Testimony of Charles V. Cors.)

The Court: Well, objection overruled. You made the journey to make such a check?

The Witness: I did.

Q. Did you find any records?

A. No, sir.

Q. Now, did you examine the records out there relative to a Westinghouse electric refrigerator, having a refrigeration unit model JX-5, Serial No. 4218692? Just "yes" or "no". Did you search the records? A. Yes.

Q. Did you find any records?

A. No, sir.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mr. Cors, what date did you say that you were at Satellite Field and you had the truck with Mr. Lymp?

A. Well, I worked there between the early part of March until the end of October.

Q. I believe, in response to a question by Mr. Arend, you stated a specific date, on the 18th of some month. What month was that?

A. I told him it was between . . . it could have been between May or July or August . . . June, July, or August. After all something like this comes up, and after a specific length of time I can't remember specifically. It could have been any of those months.

(Testimony of Charles V. Cors.)

Q. May, June, July, or August. And you assisted Mr. Lymp in loading these things on the car?

A. The electric stove and refrigerator, yes.

Q. Where were they at the time you put them on the truck?

A. In a stout house at the Twenty-Six Mile.

Q. Now, also you state that you moved them down four miles and put them in a gravel pit?

A. Well, the truck was pulled into the gravel pit off of the road, and the pick-up was there, and we moved them from the Ladd Field truck onto the pick-up.

Q. They were on a Ladd Field truck when you took them in?

A. Yes, sir, they left the Twenty-Six Mile on a government truck.

Q. What kind of a pick-up were they put on?

A. A U-Drive, a red one.

Q. And who was driving the pick-up?

A. If I recall, it was Andrew J. Hall.

Q. And where did you go then?

A. I came home on the government job.

Q. Down to Fairbanks? A. Yes, sir.

Q. And which way did the pick-up go?

A. Towards Fairbanks.

Q. Both the cars came in this way. Now, which side of the road did you turn off to go to this gravel pit?

A. On the right-hand side.

Q. How far did you drive off of the road?

A. It was approximately one-quarter of a mile.

(Testimony of Charles V. Cors.)

Q. What was the condition of the road?

A. Rough.

Q. How was it as to mud?

A. None that I recall.

Q. How did you handle these boxes from one truck to the other? Did you unload them?

A. Just picked them up and moved them over from one to the other.

Q. Now, who moved them?

A. Andrew Hall, Joe Lymp, and myself. It took the three of us.

Q. Were they in a crate at that time?

A. No, sir.

Q. Can you identify these as the range and the refrigerator that you took down there?

A. No, sir.

Q. You said later you were in Mr. Cutting's home over the Mount McKinley Ice Cream Company and you saw a range and refrigerator up there?

A. Yes, sir. [46]

Q. And they looked like these, did they?

A. I couldn't exactly say that I noticed. There was some up there. It didn't make any difference to me.

Q. Do you know the make of the range and refrigerator that was moved down by you and Mr. Hall to the gravel pit? Did you pay any particular attention to that?

A. No, sir.

Q. Now, when was it you worked up—You say you worked up at Sandy's home. Between what dates were you working up there?

(Testimony of Charles V. Cors.)

A. I don't recall any specific date. It was just during the summer.

Q. And you say you saw the range and the refrigerator in there?

A. I seen some. I don't know what they were. I don't know which ones they were, but there was a range and refrigerator up there.

Q. What else did he have in there in the way of furniture?

A. Ordinary household furniture.

Q. What do you mean by "ordinary household furniture"? Just what was in the apartment in the line of household furniture?

A. Some table and chairs.

Q. What kind of a table?

A. Ordinary chairs and table.

Q. Where was the table placed? Where was it?

A. In the kitchen.

Q. What wall was it against? [47]

A. The window.

Q. And that was the only thing in there: tables and chairs. How many chairs?

A. I can't see what sense this has got to do with it. I am not going into somebody else's—

Q. (Interposing) I just wanted to find out what your powers of observation were.

A. What?

Q. I just wanted to find out what your powers of observation were.

(Testimony of Charles V. Cors.)

A. I am not going into somebody else's place to investigate, after all.

Q. That is all there was in the kitchen: a table and chairs?

A. There could have been a table or chesterfield there, so far as I know. When you just walk into somebody's house, you don't take an inventory.

Q. Didn't you do some work up around there, Mr. Cors? A. Yes, sir.

Q. Do you know whether there was a sofa or davenport in the place? A. Yes, sir.

Q. There was one there?

A. There was a stove and refrigerator there.

Q. And sofa?

A. Do you want me to be specific?

Q. No. I am asking you a question. I want you to answer the question. The question is: Was there a davenport in the place?

A. A chesterfield, yes, and there was also a piano.

Q. And a large armchair?

A. There could have been.

Q. There could have been?

A. That's right.

Q. Isn't it a fact that you just assume that these things were in there; that you figure everybody has them? It was a pretty nice apartment, wasn't it, Mr. Cors?

A. Well, I was invited up there one time to see how nice it looked.

(Testimony of Charles V. Cors.)

Q. Just answer the question, Mr. Cors. We don't want any information volunteered.

A. What was the question?

(The question was read by the reporter.)

A. That's right.

Q. Was there a sink in the kitchen?

A. Yes.

Q. Was it built in or was it an open sink?

Mr. Arend: We object to this, your Honor, as irrelevant and immaterial to the issues in this case. It isn't proper cross-examination.

The Court: Yes. I think it has gone far enough.

Mr. Taylor: If the Court please, I believe I am entitled to test this witness' recollection as to the other furniture in the house.

Mr. Arend: He will be asking next if there were any flies on the wall.

Q. (By Mr. Taylor): Were there any flies on the wall, Mr. Cors?

Mr. Arend: We object to that.

Q. Who was your foreman at Ladd Field, Mr. Cors? Who was the superintendent, or your superior?

A. Oh, I had so many of them there, I don't recall. There could have been Madison, Kelly, Paul Stricker.

Q. Was Mr. Cutting, was he your superintendent at Ladd Field?

A. No, sir, that was at Satellite Field.

Q. At Satellite Field, I mean.

A. Oh, that was Mr. Cutting.

(Testimony of Charles V. Cors.)

Q. And you worked for him all of the time that you were there? A. Yes.

Q. I believe you stated in response to a question by Mr. Arend that you had a conversation with Mr. Cutting about this. About what time did that conversation take place, and where did it take place? Calling it a little further to your attention, you say it was after you moved the range and frigidaire or helped Mr. Lymp.

A. State your question again, please.

Q. When and where did that conversation take place? A. About what? [50]

Q. What?

A. About the stove and refrigerator?

Q. Yes.

A. I don't believe Sandy was there at the time we unloaded it. I believe it was the next day.

Q. And what was your purpose in asking him about the stove and refrigerator?

A. Oh, just personal curiosity, more or less.

Q. Did you think it a little bit odd to be transferring that stuff from one truck to another?

A. Well, Mr. Cutting was my boss. When he told me to do it, it was good enough for me. I am not going to ask for a receipt or anything.

Q. Did you talk to Mr. Cutting prior to helping Mr. Lymp load that on the truck?

A. No, I didn't.

Q. But you talked to him after you came back the next day? A. The next day.

(Testimony of Charles V. Cors.)

Q. And that was the first conversation you had with Mr. Cutting in regard to the frigidaire and the stove? A. That's right.

Q. What time did you terminate at Satellite Field, Mr. Cors? A. What time?

Q. Yes. What time did you terminate over there?

A. The latter part of August—the latter part of October.

Q. October, 1946? A. '45.

Q. '45?

A. At Twenty-Six Mile, yes. Then I came in to Ladd Field.

Q. And can you place this particular transaction any closer than somewhere in May, June, July, or August of 1945?

A. No, sir, I really can't to be honest about it. Mr. Taylor: That is all, Mr. Cors.

Redirect Examination

By Mr. Arend:

Q. Mr. Cors, how did you know that you were to transfer the range and refrigerator to this pick-up that Mr. Hall was driving?

A. Oh, we were driving to the gravel dump from the Twenty-Six Mile, after Joe Lymp came into the carpenter shop and asked me to load it on, and Joe says, "We'll pull off in here"; so we pulled off in the gravel dump and it was just unloaded from one to the other.

Q. Who was driving the truck that picked up the refrigerator and range from the stout house?

A. At the Twenty-Six Mile?

(Testimony of Charles V. Cors.)

Q. At the Twenty-Six Mile.

A. Joe Lymp.

Q. Joe Lymp? A. Yes. [52]

Q. He was in charge of it, was he?

A. That's right.

Mr. Arend: That is all.

Recross-Examination

By Mr. Taylor:

Q. Just one other question. When you left Satellite Field, which way did you drive out of there?

A. Towards Fairbanks.

Q. Were there any M.P.s at the gate, or entrance? A. Yes, sir.

Q. Did the M.P.'s check that truck?

A. Not very thoroughly. They never did.

Q. Wasn't it customary for them to check the truck?

A. Not very thoroughly.

Q. Did you have a tally out slip for that?

A. I don't know if we had a slip on that. Joe Lymp had charge of that. It was his worry, not mine.

Q. Was there anything in the truck but the refrigerator and the range?

A. Yes, the truck was loaded with materials.

Q. What else was on there?

A. I couldn't say, sir.

Q. When you drove out of the Field, when you passed the M.P.s did you stop?

A. Oh, yes. All trucks had to stop. [53]

(Testimony of Charles V. Cors.)

Q. Did you see Mr. Lymp hand a tally-out slip to the M.P.s?

A. That I couldn't swear to. I imagine there was one. It is almost second nature to hand one to them before you take a truck out.

Q. Did you say that was a Ladd Field truck you used?

A. Yes, sir.

Q. And you had driven that truck from Ladd Field to Satellite Field?

A. Oh, everybody drove the truck more or less.

Q. Was that truck stationed at Satellite Field?

A. Yes, sir, so far as I know it was there all of the time.

Q. Who customarily drove it: Mr. Lymp?

A. No. Andy Hall and myself, whenever anything had to be brought from town; it all depended on how important our jobs were. Sometimes we would get someone else to do it. We all had drivers' licenses.

Q. Did you drive the truck in addition to your carpenter duties?

A. When they were closing up the Field.

Q. Mr. Lymp drove it at times?

A. Yes, sir.

Q. Mr. Hall, was he working there at that time?

A. Yes, sir.

Q. Did he drive the truck, too?

A. At different times, yes, sir. [54]

Mr. Taylor: I believe that is all, Mr. Cors.

Mr. Arend: That is all.

(Witness excused.)

ANDREW JACKSON HALL

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Andrew Jackson Hall.

Q. Where do you reside, Mr. Hall?

A. Slater Camp.

Q. What is your occupation?

A. Electrician.

Q. Where are you employed now?

A. Ladd Field, sir.

Q. Were you employed at Satellite Field at any time?

A. Yes, sir.

Q. When were you there?

A. During 1945.

Q. In what capacity?

A. As electrician.

Q. Do you know the defendant, Mr. Percy James Cutting?

A. Yes.

Q. Have you ever been associated with him in business?

A. Yes, sir.

Q. Are you still?

A. No, sir.

Q. What business were you together in?

A. We had an electrical shop in town.

Q. Where?

A. At the old Moose Hall, Second and Wickersham.

Q. When were you together in business?

A. This was during 1945.

(Testimony of Andrew Jackson Hall.)

Q. Do you still have the business yourself?

A. Yes, I have the business.

Q. Did you have a U-Drive pick-up at Satellite Field on or about the 18th day of May, 1945?

A. Yes, sir.

Q. And what was the occasion for having that pick-up there that day?

A. Well, I had gone out to pick up some scrap lumber.

Q. Did you have any conversation with Mr. Cutting that day? A. Yes.

Q. Relative to your pick-up? A. Yes.

Q. Who was there? Who was present when you had this conversation?

A. I don't remember if anyone—I don't believe anyone was present besides he and myself.

Q. What was said? What was the conversation about? Just tell the jury.

A. Well, the best I remember, he says that he had a stove and refrigerator there; it was being loaded onto a government truck and if I would stop on my way in at a certain place and transfer it on the pick-up.

Q. What else was said?

A. And then bring it to the apartment, or the building, or the Moose Hall on Second and Wickersham, and he would help me unload it when I came in.

Q. And what did you do after your conversation with Mr. Cutting?

(Testimony of Andrew Jackson Hall.)

A. Well, I went ahead and loaded my scrap lumber, and later in the afternoon when they, after the other truck had gone on, I went along behind this truck and came to a place and turned off and went out to an old gravel pit out there, and we transferred the stove and refrigerator onto our pick-up.

Q. What person or persons were in this truck that was ahead of you?

A. Chuck Cors and Joe Lymp.

Q. What did you do after you got the range and refrigerator onto your pick-up?

A. Well, I drove on into town and parked it around in front of the building.

Q. Did you see Mr. Cutting any more that day?

A. Yes.

Q. What was he doing then?

A. Well, he came over there to the place, and we unloaded this stuff there. [58]

Q. Where did you put them?

A. I believe in the passage-way there, just as you go in on the first floor.

Q. How long did they remain in the passage-way on the first floor?

A. I can't remember, sir, just exactly how long they remained there; maybe a week or two weeks.

Q. Then what was done with them?

A. Well, I helped—one night I helped him carry them upstairs into the apartment.

Q. Now, Mr. Hall, will you step down and take a look at Government's Identifications 2 and 3, the range and refrigerator? Just examine them carefully.

(Testimony of Andrew Jackson Hall.)

(The range and refrigerator were examined by the witness.)

Q. Now, are they the range and refrigerator that you helped haul into town that day and place in the Moose Hall?

A. I can't definitely say they are, sir. They are similar. They look like the same ones, but I don't have any way of knowing about that.

Q. Did you examine them for serial numbers at that time? A. No, sir.

Q. You may take the witness stand again. Now, will you please state to the jury, when and where you first saw the range and refrigerator that you helped haul that day, May 18, 1945?

A. Well, when I first saw them, I guess it was about the first week when I went out there, which was probably the first of December, 1944. I saw them at that time.

Q. Where did you see them then?

A. They were in one of the small buildings that was being used there.

Q. Did they remain in that same building?

A. For possibly two months, or maybe three months. Then we moved them into another building.

Q. And do you know whose building that was?

A. Well, it was a government building.

Q. How far apart are the two buildings that contained these items—that is, the one where they were first and the one where they were moved to—how far apart were they?

A. About thirty, maybe forty feet.

(Testimony of Andrew Jackson Hall.)

Q. Did you ever use the range and refrigerator when they were in those buildings out there at Satellite?

A. Yes, several of us fellers, cooked on it and used the refrigerator also.

Q. Do you remember what make they were?

A. Yes. They were Westinghouse stove and refrigerator.

Q. Do you know how long the range and refrigerator remained in the Moose Hall after you placed them there in 1945? Just "yes" or "no".

A. Do I remember?

Q. Do you know how long they remained there? "Yes" or "no".

A. Not exactly, no. [60]

Q. Not exactly. Well, do you know what was done with them after they were placed upstairs?

A. Yes, sir.

Q. What was done with them?

A. Well, they were taken back to Satellite Field.

Q. And why were they taken back to Satellite Field?

A. Well, about this time there was being some investigation of some other things, and Mr. Cutting asked me if—he was worried about it and thought there might be an investigation——

Mr. Taylor: (Interposing) Just a moment. We object to that conversation unless the time, place, and who was present is established. There is no foundation laid for it.

The Court: Well, do that.

(Testimony of Andrew Jackson Hall.)

Q. All right. You say you discussed the matter with Mr. Cutting as to taking them away from the Moose Hall and taking them back to Satellite Field?

A. Well, there was no discussion. I don't think you would call it discussion. He just asked me if I would help him take them back out there.

Q. Now, when was that?

A. I am not good at remembering dates. I think it was probaly—it might have been July or August. I believe it was probably in August.

Q. Did you take them back to Satellite Field?

A. Yes.

Q. And when did you do that?

A. Well, in August. I think it was in August.

Q. And you say now that you had a conversation with Mr. Cutting relative to taking them back out there, is that right? A. Yes.

Q. But you don't know definitely when that was?

A. No, sir, I couldn't say exactly.

Q. Was it before or after you took them back out to Satellite Field?

A. Well, we discussed it before we took them back out, sure.

Q. Will you state what you discussed?

A. Well, the best I remember is Mr. Cutting says, "Well, there is an investigation out there," and we had been talking about this, this other investigation that was coming up, and he says, "I suppose we had better take that back out there; it is too hot." And he asked me if I would help him take them back out as we are going out to work,

(Testimony of Andrew Jackson Hall.)

and I said, "Sure, I will help you." I was riding in the truck with him going to work, and I helped him load it back on the truck and take them back out and load them back into the same building we had taken them out of.

Q. Did you use them after you had taken them out there the second time? A. No, sir.

Q. Why not? [62]

A. We did not have any occasion to. The gang had pulled out. My wife was in town, and I just wasn't staying out there at night at that time.

Q. Now, do you know—"yes" or "no"—do you know how long the range and refrigerator remained at Satellite Field after you took them out there the second time? A. Not exactly.

Q. Were they taken away from Satellite Field a second time? A. Yes.

Q. When was that?

A. Well, I believe it was probably the last of September, or about the—about the last of September—or the first of October.

Q. And did you take any part in removing them from Satellite Field the second time?

A. Yes.

Q. Did anyone help you?

A. Mr. Cutting and I.

Q. And where did you take them the second time?

A. Well, we took the refrigerator back to the Moose Hall in the passage-way there, as before;

(Testimony of Andrew Jackson Hall.)

the stove was put into a building in the back part of the building which was at that time used by the Veterans of Foreign Wars.

Q. How long did they remain there?

A. I think two or three weeks.

Q. Then what happened to them?

A. Well, he asked me if I would crate them up for him; that he wanted to take them to Anchorage.

Q. What did you do when he asked you that?

A. I told him, yes, I would crate them up for him.

Q. How did you crate them up?

A. Well, by cutting plywood to the proper size and boxing them up, and I made the plywood boxes myself. I just built a box around the stove and the refrigerator.

Mr. Arend: Now, we would like to have these two boxes marked for identification, Mr. Clerk.

(Thereupon the above-mentioned boxes were marked Plaintiff's Identifications 6 and 7 by the clerk of the court, 6 being for the stove and 7 for the refrigerator.)

Q. (By Mr. Arend) Will you please examine those identifications, the two boxes?

(The witness examined the boxes indicated.)

Q. Did you have anything to do with the making of those two identifications?

A. Yes, sir. At least I can definitely identify the crates, the boxes.

Q. Now, after you built the crates, what did you do? Just remain where you are please.

(Testimony of Andrew Jackson Hall.)

A. I didn't do anything with them. I just left them right there where I built them. [64]

Q. Did you have any conversation with Mr. Cutting or Mrs. Cutting at the time you were working on the crates and placing these items in them?

A. Well, I had promised her that——

Q. (Interposing) Just "yes" or "no".

A. Yes.

Mr. Taylor: Just a moment. I object to——

Q. Yes. A. Yes.

Q. With whom did you speak?

A. Mrs. Cutting.

Q. And what was said?

Mr. McCutcheon: Just a moment. We object unless a proper foundation is laid for this conversation. We object to it as not made in the presence of the defendant.

The Court: Objection sustained. I think you had better resume the stand.

(The witness returned to the witness stand.)

Q. (By Mr. Arend) Did you place anything in the crates besides the refrigerator and range?

A. Inside the refrigerator there was, yes, sir, some things placed inside of the refrigerator.

Q. Can you state what you placed inside of the refrigerator?

A. I could name some of the articles.

Q. Please name what you remember.

A. There was a pair of sheep-skin lined boots, or flying boots, as they call them, and I believe

(Testimony of Andrew Jackson Hall.)

there was—I remember I had a lot of trouble getting them in—was one of these packs that you carry stuff on your back. I can't definitely remember some of the other articles, but those two I do remember definitely.

Q. Now, will you examine the contents of government's Identification No. 3, the refrigerator, and state whether or not you find any of the things that you have mentioned inside of the refrigerator? You may bring them out.

A. They look the same, sir.

Mr. Arend: We would like to have these items marked, the boots. What number would that be?

The Clerk of Court: The boots will be number eight.

(Thereupon the above-mentioned boots were marked by the clerk of the court as Plaintiff's Identification No. 8.)

Mr. Arend: And then the pack sack will be what number?

The Clerk of the Court: The pack sack will be number nine.

(Thereupon the above-mentioned pack sack was marked by the clerk of the court as Plaintiff's Identification No. 9.)

Q. (By Mr. Arend) Examine the brown bag here.

A. I remember the pants and the sack, and the pack sack, and the boots. I don't definitely remember any of the other articles.

(Testimony of Andrew Jackson Hall.)

Q. The pants.

Mr. Arend: We would like to have them marked for identification. [66]

(Thereupon the above-mentioned pants were marked by the clerk of the court as Plaintiff's Identification No. 10.)

A. I just remembered this blanket here around this. That is all I remember.

Q. Did you place the waffle iron in the refrigerator?

A. I can't definitely remember the waffle iron.

Q. That is all then. You may take the stand again.

(The witness returned to the witness stand.)

Q. Just "yes" or "no", did you at any time after November 7, 1945, speak with Mr. Cutting relative to the range and refrigerator? "Yes" or "no." A. Yes.

Q. When was that?

A. That, I think, was in July, 1946. I think it was in July of '46.

Q. Where at? A. At Ladd Field.

Q. And who was present at that time?

A. No one. He and I is all.

Q. What was said at that time?

A. He asked me what I had told the grand jury; why I had told the grand jury some things that I had told them, and I told him that I just answered the questions truthfully that was asked me; and then he told me that there was no one except myself

(Testimony of Andrew Jackson Hall.)

and Mrs. Cutting that knew about the stove and refrigerator being moved back to Satellite and then back again, and he know that I was the one that told them about it.

Q. Did you have a telephone conversation with Mr. Cutting on December 17, 1945.?

A. I had a telephone conversation with him long distance. I don't remember the date, sir.

Q. Where was he?

A. In Anchorage.

Q. Was that the only telephone conversation from Anchorage that you had with him?

A. Yes, I think so.

Q. What was said at that time?

A. Well, he just asked how I was getting along, and so forth, and if Mr. Baskin, the F.B.I. agent, had been asking me questions and he just told me not to tell him anything. That is the most I remember about that.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

If the Court please, it is only a few minutes till five o'clock I would like to suggest we adjourn until tomorrow morning, because this cross-examination is liable to be quite long.

The Court: Yes, I think so, too. We will take an adjournment in a few minutes, ladies and gentlemen of the jury, and in the meantime remember do not talk about this case with anyone or permit any-

(Testimony of Andrew Jackson Hall.)

one to talk about it in your presence or about the parties. Keep your mind perfectly free from an opinion until the case is finally submitted to you.

Mr. Arend: If the Court please, I would like to ask permission to have this witness identify some pictures of buildings out at Satellite Field.

The Court: Very well. We will take adjournment until ten o'clock tomorrow morning.

(Thereupon court was adjourned and was duly reconvened at ten o'clock a.m., November 13, 1946, and the following proceedings took place:)

The Court: Call the roll of the jury.

(All members of the jury were present.)

The Court: Counsel ready to proceed with the trial of this case of the United States v. Cutting?

Mr. Arend: Yes, your Honor.

Mr. Taylor: Ready, your Honor.

ANDREW JACKSON HALL

a witness on behalf of the plaintiff, having been previously sworn, resumed the witness stand and was further examined and testified as follows:

Further Direct Examination

By Mr. Arend:

Mr. Arend: If the Court please, I would like to introduce as exhibits of the government two photographs. Counsel have agreed that they may be introduced.

(Testimony of Andrew Jackson Hall.)

The Court: Very well, they may be admitted.

(Thereupon the photographs above referred to were marked by the clerk of the court as Plaintiff's Exhibit B and Plaintiff's Exhibit C.)

Q. Mr. Hall, I show you Plaintiff's Exhibit B and ask you to look at it and state if you know where the building bearing the number 580 on the door is located?

A. This is a building used at Satellite Field, on an intersection of streets. I don't remember just the name of the streets there, but it is one of the buildings which was used there for——

Q. (Interposing) To whom did the building belong in 1945?

A. It belonged to the government. It is a government building. However, this is the——

Mr. Taylor: (Interposing) Just a moment. I believe the witness has answered the question. I don't want him to go into further detail.

Q. (By Mr. Arend) Was the building ever occupied by Mr. Cutting, the defendant, to your knowledge?

A. Yes. Yes, he claimed that as his hut, this building.

Q. Then I show you Plaintiff's Exhibit C, and, if you find the same building in that picture, will you please mark an "A" over the building?

A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. Do you know June Peterson?

A. No, sir. She left; she was gone already when I went out there.

Q. By reputation, do you know whether she occupied a building out there? A. Yes.

Q. Will you look at this picture and see if you find that building on the picture? If so, will you mark a "B" over the building.

A. Yes, sir.

Mr. Arend: May I show these to the jury, your Honor?

The Court: Surely.

(Thereupon Mr. Arend exhibited the above-mentioned photographs to the jury.)

Q. Mr. Hall, did you receive any compensation for your work in transferring the refrigerator and electric range from Satellite Field to the Moose Hall from Mr. Cutting?

A. No, sir, I did not.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. How old are you, Mr. Hall?

A. Forty-one.

Q. And where were you born?

A. Georgianna, Alabama.

Q. How long have you been in the Territory of Alaska?

A. Two years and nine months.

(Testimony of Andrew Jackson Hall.)

Q. Two years and nine months?

A. Approximately.

Q. And did you come directly from Alabama here?

A. No, sir.

Q. Where did you serve in the army, Mr. Hall?

A. I served in the army in San Antonio, Texas.

Q. When?

A. 1928—'27, '28, '29.

Q. You haven't served in the army during the present war then?

A. No, sir.

Q. Those army clothes that you have on, then, are clothes that you purchased from the army?

A. I purchased this shirt from the PX at Satellite Field, and I purchased the pants from Livesley's store on Second and Cushman. That cost \$7.50.

Q. And you say you have followed the electrician's trade?

A. Yes, sir.

Q. Now, when did you first go to work at Satellite Field?

Q. November or December of 1944.

Q. Was that your first work in Alaska?

A. No, sir.

Q. Had you worked up here before that?

A. I worked at Ladd Field before that.

Q. As electrician?

A. Yes, sir.

Q. And when did you first meet Mr. Cutting?

A. I believe it was the latter part of November, 1944.

Q. And what was his position at that time, Mr. Hall?

A. He was in charge, superintendent of maintenance and repair.

(Testimony of Andrew Jackson Hall.)

Q. And you were working under him from November, 1944, on till the time——

A. (Interposing) No, I wasn't working directly under him when I first went out there. I was detailed out there to do some special work, and I later transferred to his payroll out there.

Q. How long did you remain at Satellite Field after going there?

A. Until February or March, 1946.

Q. And then you transferred to Ladd Field?

A. I was transferred back to the payroll at Ladd Field, yes, sir.

Q. And then you stated, in response to questions by Mr. Arend, that you had a conversation with Mr. Cutting about hauling this range and refrigerator into town? A. Yes.

Q. Just where did that conversation take place? At Satellite Field?

A. You mean about transferring it over onto the pick-up truck which I had?

Q. Your first conversation in regard to hauling that in. [73]

A. Well, the best I remember it was out there between the office building and the power house out there where I had the truck parked.

Q. What kind of a truck did you have, Mr. Hall?

A. I don't remember if it was a Ford or Chevy. A small pick-up is all. I don't remember the make.

Q. Was it your own truck?

A. No, sir.

Q. Where did you get it?

A. Fairbanks U-Drive.

(Testimony of Andrew Jackson Hall.)

Q. About what date was that?

A. I don't remember exactly. It could have been April or May.

Q. And what was your original purpose in going to Satellite Field?

A. To pick up some scrap lumber, building material.

Q. Had you talked to Mr. Cutting before about picking up scrap lumber and building material?

A. Yes, sir.

Q. And where was the scrap pile out there, Mr. Hall?

A. It was in—the particular scrap that I was getting was in an old building out there, where a partition had been torn out of a building.

Q. How far was that from the building that you claim was owned by the government and was occupied by Mr. Cutting?

A. Oh, it is probably two hundred feet—two, three hundred feet.

Q. Did you go to the scrap pile that day and get any material off the scrap pile?

A. No. No, sir.

Q. You say this was an old partition out of a building?

A. Yes, sir.

Q. What kind of stuff was that? Was that plywood or celotex?

A. It was celotex.

Q. In sheets?

A. Well, there was half sheets, and just small strips of the batting.

(Testimony of Andrew Jackson Hall.)

Q. How much of it did you get?

A. Well, it must have been seven or eight pieces.

Q. You hired the truck to go out and get seven or eight pieces of scrap material?

A. I had some other stuff there. I had some of my clothing. I didn't live out there, because my wife had come to town and I still had a couple of foot-lockers of clothing I wanted to bring out at the same time.

Q. At the time you took the truck out to bring this stuff in, was there any M.P.s at the gate?

A. Yes, sir.

Q. Did you check in through the M. P.s?

A. Well, yes. I went through the gate, that's right. I don't know if they made a record of me going in and out or not, but I certainly went through the gate. [75]

Q. Did you stop there?

A. Yes, sir, I stopped there and waited for the signal to proceed.

Q. What did you load first? Your own personal belongings?

A. Yes, I believe I loaded my foot lockers on first.

Q. Then you went down and got these sheets of plywood and batting and so forth?

A. Yes. There was some small pieces of this linoleum that was around there also.

Q. And you say this was a little one-half ton pick-up?

A. Yes, it could be one-half ton, or three-quarters ton.

(Testimony of Andrew Jackson Hall.)

Q. You loaded this stuff on at this place where the partitions had been torn out, about two hundred feet from where this refrigerator and stove were?

A. Yes, sir.

Q. And where did you drive to after that?

A. Well, I drove back up to the power house, and I believe I got out and probably ate dinner.

Q. You did what?

A. I just parked the truck and went and had dinner out there.

Q. That was about dinnertime, was it, about noon, was it?

A. Well, yes, that's right. I am not sure that I loaded all the stuff before dinner or after dinner, but I ate dinner there that day.

Q. Then when did you see Mr. Cutting? Was it after dinner?

A. Yes. Yes, when we had the conversation about the stove and refrigerator, it was after dinner, yes.

Q. And that was the time, according to your statement, that Mr. Cutting asked you to take this refrigerator and stove in?

A. Yes.

Q. Then what did you do after you talked to Mr. Cutting?

A. I don't remember doing anything in particular. I usually stay around there awhile and talk to the boys. I don't recall anything in particular I did.

Q. Did you drive over to the place where the refrigerator and stove were?

A. No, sir.

(Testimony of Andrew Jackson Hall.)

Q. Well, how did you get the stove and refrigerator on the truck?

A. It was transferred onto my truck after I left the Field on the way to town.

Q. Did you see Joseph Lymp at that time? Do you now Joseph Lymp? A. Yes, sir.

Q. Do you know Charles Cors?

A. Yes, sir.

Q. Known as Chuck Cors?

A. That's right.

Q. Did you talk with them at the Field that day?

A. Well, yes.

Q. Did you work with those two men?

A. Not directly. They was working in the carpenter shop, and I was in the electrical department, and I knew them. [77]

Q. Did they drive truck part of the time out there, Mr. Hall?

A. Not as a regular truck driver, but, if anyone wanted to haul something, he would go get a truck. You could call it truck driving in his own work, yes, but not hired as a truck driver.

Q. Did they sometimes drive to Ladd Field?

A. Yes, sir.

Q. And other places around Satellite Field?

A. That's right.

Q. Now, at what time did you leave there that afternoon?

A. Probably two o'clock—three o'clock.

Q. You just sat around there talking between after dinnertime and two or three o'clock?

A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. And when you went out, I suppose you had to drive past the M. P.s when you went out?

A. That's right.

Q. Did you have a tally out slip at that time to give to the M.P.s?

A. Yes, I am sure I did, because that was customary that we have a gate pass for anything we take out.

Q. Who had given you the tally out slip to give to the M.P.s?

A. Well, Mr. Cutting was the only one authorized to do so.

Q. Do you know Mr. Ward? A. Yes.

Q. Did you ever get a tally slip from him when you were driving out?

A. Sometimes. Sometimes he would give us a tally out sheet, but they were signed by Mr. Cutting. I don't think Ward ever signed a tally out, a gate pass, with his own name.

Q. So when you went out then, you gave this tally out slip to the M.P.s?

A. I am sure I did. Sometimes, however, the M.P.s didn't collect this gate pass, this tally out. They probably wasn't interested enough if they saw what you had. Sometimes they didn't.

Q. I believe you stated in response to questions by Mr. Arend that you followed this other truck down the road?

A. Yes, I believe I followed it, or maybe we were driving right along together; I am not sure which.

(Testimony of Andrew Jackson Hall.)

Q. Did you help load the refrigerator and stove on the big truck? A. No, sir.

Q. What make was the big truck?

A. I am not sure. It was a stake body truck. I believe it was the Ford type.

Q. About what tonnage?

A. About a ton and a half, two tons, something like that.

A. Did you see that truck go out the gate past the M.P.s?

A. Well, I am not sure about that. I might have been ahead of them. [79]

Q. You might have went out first?

A. I believe I was behind him, sir.

Q. You were behind him. Well, did you see him go out the gate?

A. Yes, they were——

Q. (Interposing) Did you see them stop at the gate, at the M.P.s?

A. I don't remember. Small details like that I didn't take into consideration.

Q. You didn't pay much particular attention, then, as to whether they stopped at the gate and handed in a tally out slip; is that right?

A. That's right.

Q. How far did you say it was down to where you turned off the road?

A. About four miles.

Q. Did you see the truck that was preceding you turn off? A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. And then you turned off too. How far did you drive?

A. About two hundred yards.

Q. You didn't drive half a mile then?

A. Well, no, I don't think it was a half a mile, no, sir.

Q. How was the road?

A. Well, it was a little wood road there. There is no pike there or anything, but it is a pretty good wood road in there.

Q. Is it a pretty good road? A. Fair.

Q. Muddy? A. No, sir. [80]

Q. You say that was in May, you think, April or May? A. I think so.

Q. Was there any snow on the ground—patches?

A. No. No, I don't remember any snow.

Q. Now, how did you line these trucks up to move the refrigerator and stove from one to the other?

A. Well, the refrigerator and stove was on the back end of the big truck, and I just backed the pick-up to the back end of that truck and slid one over to the other.

Q. What did you do with the stuff that was on your truck?

A. It was still on my truck.

Q. Did you put this range and refrigerator on top of the stuff that you already had there?

A. Well, the range I believe was set up on top of it, and there was room on the back end of the pick-up, the best I remember, for the refrigerator.

(Testimony of Andrew Jackson Hall.)

Q. And after that did you rope that stuff down?

A. Yes, I think we—I think we tied it down with a rope.

Q. And who drove out of that road first?

A. Well, the big truck drove out first.

Q. And you followed out? A. Yes.

Q. And came to town. Now, where did you go after you came to town? After you came to town, where did you take your truck and your personal belongings and scrap lumber and this refrigerator and stove? Where did you go with that?

A. Over to the Moose Hall building on Second Avenue.

Q. And who did you see there?

A. Well, I believe Ed Mears was around and Mrs. Cutting, and I don't remember if there was anyone else around.

Q. And what did you do when you got there?

A. Well, I parked the truck there. I just parked the truck in front of the building.

Q. How long did you leave it there?

A. Oh, possibly an hour.

Q. And was your personal stuff and the scrap you picked up there still on the truck?

A. Yes, sir.

Q. And then after the hour, what did you do? Did you drive away with it?

A. No. We unloaded the stove and refrigerator there at this building.

Q. You say "we". Who do you mean by "we"?

(Testimony of Andrew Jackson Hall.)

A. Well, the best I remember it was Ed Mears and Mr. Cutting helped me unload these off the end of the pick-up.

Q. Mr. Cutting had come into town, then, since you had seen him at Satellite Field?

A. That is why we were parked there for an hour, an hour and a half, waiting. [82]

Q. What time was that?

A. It must have been, I believe, around five-thirty, something like that.

Q. Then you and Mr. Mears and Mr. Cutting, then unloaded the range and the refrigerator?

A. I think that is right.

Q. How much did the refrigerator weigh, Mr. Hall?

A. Well, it weighs, I think it weighed 250 pounds—200—250—maybe more.

Q. How did you unload it? Just lift it out?

A. By taking ahold of it and packing it in.

Q. Who took ahold of it and packed it in?

A. All of us took ahold of it.

Q. Where did you have ahold of it?

A. I don't remember.

Q. Where did Mr. Cutting have ahold of it?

A. I don't know, sir.

Q. And where did Mr. Mears have ahold of it?

A. I don't know.

Q. Where did you pack it to?

A. To across the sidewalk, through the door, and into the passageway.

(Testimony of Andrew Jackson Hall.)

Q. And how far was that?

A. Well, it is probably thirty to fifty feet.

Q. Now, where did this passageway lead to, Mr. Hall? [83]

A. Well, it lead through into the cold storge, and there was a stairway that went up into the apartment upstairs.

Q. And which way did you go with that?

A. We didn't get to the end of the passageway.

Q. Did you have a shop in there at that time, Mr. Hall? A. Yes, sir.

Q. And did this stuff go back to the shop or down the passageway towards your shop?

A. It went that way, but not that far.

Q. Did you put any of it in your shop?

A. The stove and the refrigerator?

Q. Yes. A. No, sir.

Q. How big was your shop?

A. About twenty feet one way and ten or eleven feet the other way.

Q. At that time did you have your tools and electrical equipment in the shop?

A. Yes, sir, some.

Q. Then, after you unloaded that and took it back to the passageway towards your shop, what did you do?

A. I unloaded this scrap material that I had brought there. The purpose I brought the scrap material was to build this little room. This corner of that was allotted to me for the electrical shop.

A. And you took that into the electrical shop, did you? A. Yes.

(Testimony of Andrew Jackson Hall.)

Q. You took your personal stuff to your home, did you? A. Yes, sir.

Q. And took the truck to Mr. Nehrbas; is that right? A. That's right.

Q. How much did Mr. Nehrbas charge you for the use of the truck that day?

A. Seven dollars and a half.

Q. Now, were you in partnership with Mr. Cutting at the time you did this?

A. We were. Yes, we were working together?

Q. How long did you and Mr. Cutting work together?

A. Well, he was associated with me up until the time he left for Anchorage, I think, off and on.

Q. How many jobs did you and Mr. Cutting do together as partners?

A. Well, under this—the way we did business down there—the way—he actually helped me on one job; I think that is about the only time that he actually helped me do any of the work. However, there was one day there he came in on part of the proceeds by furnishing material, and any material that was used he would get some compensation for.

Q. Did Mr. Cutting put some money into the business?

A. No, except for some material that he furnished, I don't believe he did. [85]

Q. And he actually helped on the one job. What job was that?

A. It was the job at the Fairbanks Cold Storage, putting in the refrigeration.

(Testimony of Andrew Jackson Hall.)

Q. Who did you rent this shop from, Mr. Hall?

A. Well, I rented it from Ed Mears and Mrs. Cutting.

Q. What was the rental?

A. We was paying \$25.00 per month.

Q. Was that rent paid?

A. The rent was paid after—I didn't the first—possibly the first two months I didn't pay any rent with money. I did some work for them and we—I just allowed the work that I did to kind of pay my part of the rent for the first two months. After that, the rent was paid every month.

Q. You think it was in May, then, that you had brought this electric range and refrigerator down there to your place?

A. I think it was. I believe it was in May.

Q. How long did that range and refrigerator remain there? A. In the passageway?

Q. Yes.

A. Maybe a week or something like that—maybe two weeks.

Q. What became of it then?

A. It was taken upstairs.

Q. Who took it upstairs?

A. Well, I helped Mr. Cutting take it upstairs.

Q. How did you take it up? [86]

A. We just packed it upstairs.

Q. He had hold of one end and you of the other?

A. Yes, sir. I believe Ed Mears possibly helped us on that some, too. I don't quite remember. I believe he did.

(Testimony of Andrew Jackson Hall.)

Q. You are not quite sure, though, about Mr. Mears helping. Where was the refrigerator placed upstairs?

A. Well, I believe they were placed just outside in this large area before you go into his apartment. I think he placed them there, because the rooms were not complete yet.

Q. And the range, where did you place it?

A. In the same place: in this area.

Q. And then how long did they remain upstairs, Mr. Hall?

A. Well, let's see. Three to four months, I think.

Q. And you helped move them back, you say?

A. Yes.

Q. Who carried them downstairs?

A. Mr. Cutting and I.

Q. Both of them? A. Yes.

Q. Who took them back to Ladd Field?

A. Satellite Field.

Q. Satellite Field. Now, you don't remember the exact date, then, of those——

A. (Interposing): No. I am not very good at remembering dates. I just know approximately the time. [87]

Q. Who drove the truck going back out there, Mr. Hall? A. Mr. Cutting.

Q. Mr. Cutting drove the truck out?

A. That's right. I was riding with him as we were going back and forth to work at Satellite. We took those back as we were going to work in the morning.

(Testimony of Andrew Jackson Hall.)

Q. When they went back in, did they have a tally in sheet?

A. I don't know. No, I think not.

Q. Did you stop at the M.P.s?

A. Well, the M.P.s don't check anything—they didn't at that time—anything going in. They didn't care what you brought in.

Q. They care quite a bit about what you bring out, isn't that right, Mr. Hall?

A. No, not at that time, they weren't too particular.

Q. Well, why did you take the things back to Satellite Field?

A. Why did I take them back?

Q. Yes.

A. I just went along so as to help him. He told me that since this investigation had come up about the house and everything, he was afraid that there would be an investigation down at this place, and they would find this stove and refrigerator missing.

Q. Now, did you know anything about an investigation being made at that time? [88]

A. Yes, sir.

Q. How did you know?

A. Well, just what the fellers I worked with were talking about it, and that is all.

Q. Had any investigator ever been at your place, at your shop, Mr. Hall? A. Yes.

Q. Who? A. Mr. Baskin.

Q. And about what time did Mr. Baskin come to your place?

(Testimony of Andrew Jackson Hall.)

A. Well, let's see. That might have been in June, something like that. I don't remember the date.

Q. And what did he do while he was in your place?

A. Well, he looked around, and he asked me some questions about some motors that was there, where I got them and things like that.

Q. And what did he do in regard to the motors, Mr. Hall?

A. He picked them up and brought them down to the Federal Building.

Q. Where are those motors now?

A. The motors were returned to me.

Q. When?

A. I don't remember the date, sir. Sometime last summer, possibly.

Q. They were returned to you after the indictment had been returned against Mr. Cutting this last summer? [89]

A. I am not sure if it was just before or after. It might have been before; it might have been afterwards.

Q. Was it in '46 or '45?

A. Well, it was in '46.

Q. And about what time in '46? Was it after you had appeared before the grand jury?

A. I am not sure if it was after or before, sir.

Q. Did Mr. Baskin make any promises to you about returning these motors if you would testify in this case against Mr. Cutting?

A. No, sir.

(Testimony of Andrew Jackson Hall.)

Q. Did you volunteer this information that you gave to Mr. Baskin?

A. I answered the questions that was asked me as truthfully as I could, sir.

Q. And you admitted to Mr. Baskin, then, that you was implicated in the taking of the stove and the range; is that right?

A. I told him I was working under Mr. Cutting during working hours, and he asked me if I would help him do that, and, as long as he was boss and I was getting my time right along—I did a lot of other jobs besides strictly electrical work out there. I don't know——

Q. (Interposing): After you had told Mr. Baskin about this, he then returned the motors to you; is that right?

A. Well, I might have had the motors back before then. I am not sure about that. I am not just sure when I got the motors back. [90]

Q. Your mind is particularly hazy on that?

A. I don't remember any of the dates, sir. You will notice that all the way through.

Q. Did Mr. Baskin say these motors were government property?

Mr. Arend: We object to it, your Honor, unless it is shown that Mr. Baskin knew they were government property.

The Court: Objection overruled.

Q. Did Mr. Baskin say that this was government property?

A. No, I don't believe he told me they were government property.

(Testimony of Andrew Jackson Hall.)

Q. Did he tell you why he was seizing them?

A. Well, yes, he told me why he was taking them.

Q. Why?

A. He wanted to check up and find out who the motors belonged to. He didn't know but what they were government property.

Q. Did he take anything else at the time besides the motors? A. No, sir, I believe not.

Q. How long did Mr. Baskin have those motors?

A. I don't remember—several months.

Q. Did you make any objection to him taking the motors? A. No, sir.

Q. Were the motors government property, Mr. Baskin?

A. With the exception of one motor; I am not sure of one of them. The others I am very positive were not government property. Two motors I bought from a feller that I am not exactly sure where he got them. One motor was a motor that came [91] from Satellite Field, and Mr. Cutting told me this motor had been discarded by the M. K., and if I could repair it so that it would run, well, I could have it.

Q. Did you get that motor off the scrap pile of scrap material?

A. It wasn't exactly on a scrap pile. It had been discarded.

Q. Did you ever do a wiring job, put in some light fixtures, for Mark Sells at the Pioneer Cleaners? A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. Just what did that job consist of? What material went into it?

A. Well, there was some wiring, conduits, and fluorescent lights.

Q. Where did you get the fluorescent lights, Mr. Hall?

A. The fluorescent lights—two of the fluorescent lights I got from Ed Mears, and there was one different type light that was in some scrap material that we brought from Satellite Field.

Q. Did you tell Mr. Sells where those fluorescent fixtures had come from?

A. No, sir. He didn't ask me where they come from.

Q. Those fixtures are still in Mr. Sells' place, are they, in the Pioneer Cleaners?

A. I am not sure if they are or not.

Q. Now, isn't it a fact, Mr. Hall, that Mr. Baskin returned these motors to you to induce you to testify against Mr. Cutting?

A. No, sir. He made me no promises whatever.

Q. You volunteered this information? [92]

A. When he asked me these questions, I answered his questions as truthfully as I could, sir.

Q. Where are you working now, Mr. Hall?

A. Ladd Field.

Q. What do you do there?

A. Electrical work.

Q. Were you made any promises of continuing in the employ of the government after admitting to Mr. Baskin that you had participated in the theft of these articles?

(Testimony of Andrew Jackson Hall.)

A. I was made no promises by anyone, sir.

Q. Have you ever discussed this matter since with Mr. Baskin?

A. Which matters is this you are talking about?

Q. In regard to continuing working for the government?

A. No, sir.

Q. Or in regard to your testimony here?

A. No, sir.

Q. Have you ever discussed with Mr. Baskin the testimony you was to give here?

A. No, I don't recall any, except when he asked me if I was willing to testify to the statements I had made to him.

Q. Did you talk to Mr. Arend about what your testimony was to be here?

A. No, sir.

Q. You voluntarily come down then and give your testimony on your own volition, then? [93]

A. Well, when I received the summons to come down.

Q. Without any reward or promises being made to you for immunity?

A. Yes, sir.

Q. Now, after you took those things out to Ladd Field, or to Satellite Field, I believe you stated in response to Mr. Arend's question that you went back out there again and got them?

A. Well, not exactly. I said that we brought them back. We brought them back to town one at a time, sir.

Q. Where were they when you took them out after bringing them in the first time? Where did you put them?

(Testimony of Andrew Jackson Hall.)

A. We put them back in the same building from which they were taken from.

Q. And what building was that?

A. That was this building No. 580 that we were just looking at the picture of here.

Q. Was that a locked building?

A. There was a padlock on it, yes.

Q. How many had the key for that, Mr. Hall?

A. There is only one key, I believe, that Mr. Cutting kept in the office.

Q. Was that a kind of an office, headquarters?

A. Where the stove and refrigerator were?

Q. Yes. A. No, sir, it was no office. [94]

Q. Was there any other furniture in it?

A. Yes, there was some chairs and a table, possibly a hat rack, something like that.

Q. A bed?

A. At this time it was carried back, there was no bed in there. There had been a bed in there.

Q. Who went back with you, Mr. Hall, when you took the range and refrigerator back?

A. Mr. Cutting. I was with him.

Q. What did you haul it in? A. A pick-up.

Q. Did you rent that pick-up?

A. No, this was the government pick-up which we drove back and forth to work.

Q. Then when you went back in, you say you took them back one at a time? A. That's right.

Q. What did you take back first?

A. I don't remember. I kind of believe it was the stove we took back first.

(Testimony of Andrew Jackson Hall.)

Q. Where did you get them from when you took them back?

A. We got them from the apartment over there at the Moose Hall.

Q. How did you get them downstairs?

A. We packed them downstairs.

Q. You and Mr. Cutting? [95]

A. Yes, sir.

Q. Did anybody else help?

A. No, I think not.

Q. You packed them out and put them in this truck and took them back to Ladd Field?

A. Satellite Field.

Q. Or Satellite Field. Was there any M.P.s out there when you took them back?

A. Oh, yes, there was M.P.s there.

Q. Did they stop you and see what was on the truck? A. No.

Q. They didn't stop you. Did you have a tally in sheet? A. No, I think not.

Q. Well, how many days was it between the time you took the stove out until you took the refrigerator out?

A. Well, I am not sure. I believe it was either the next day or two or three days, probably, between the time, is the best I remember.

Q. Then you went through the gate going back out. The M.P.s didn't stop you that time either?

A. We stopped there at the M.P.s until he recognizes you and he tells you to proceed.

(Testimony of Andrew Jackson Hall.)

Q. When you got out there, who unloaded those things out of the truck?

A. Mr. Cutting and I.

Q. And you had to get them back towards the back end of the truck and then lift them off?

A. We lifted them off the truck and through the door of the building, yes, sir.

Q. How high was the door?

A. How high was the door?

Q. Was it as high as the floor of the pick-up?

A. No, the door of the building was lower than the pick-up.

Q. The two of you then had to take the full weight of the stove and refrigerator to get it down to the level of the door?

A. Yes.

Q. And you and Mr. Cutting each had hold of one side to balance it?

A. That is about the way you usually do that.

Q. And then you put them in. After taking those two things out there, how long did they remain there?

A. I am not sure; possibly two months, maybe three months, something like that.

Q. Did you help bring them back in then? I believe you stated you did.

A. Yes.

Q. Did you bring them in?

A. I helped Mr. Cutting bring them in.

Q. And did you and Mr. Cutting load them?

A. Yes. [97]

Q. Did anybody else help you?

A. No, sir.

(Testimony of Andrew Jackson Hall.)

Q. And what did you use to bring them in that time?

A. We brought them in in a government pick-up, government truck.

Q. The same one you had taken them back out in?

A. Well, I don't know. Sometimes we would get a different pick-up. It might have been the same one; it might have been a different one.

Q. It was about two months they remained out there before you brought them back to town?

A. Something like that.

Q. When you brought them in, did you bring anything else at that time?

A. No, I don't believe we did.

Q. Would you say you brought those in about the 22nd of October or the 24th of October?

A. I don't remember any dates on it, sir—something like that.

Q. Was it in October?

A. I think it was. I think it was in October.

Q. Was there snow on the ground?

A. I believe there was snow on the ground.

Q. Where did you take the refrigerator and the stove when you brought them back to town the second time?

A. The refrigerator was placed in the passageway of the Moose Hall building as before. The stove was placed in the building, [98] the rear part of the building, which was occupied at that time by the Veterans of Foreign Wars.

(Testimony of Andrew Jackson Hall.)

Q. Was it the back entrance? Where was the entrance to the building that was occupied by the Veterans of Foreign Wars?

A. It was on the Second Avenue entrance.

Q. Was there any equipment in that building that you took the range to?

A. No, I think not. The best I remember there is some cold storage lockers in there, a walk-in refrigeration box, some company was using for storing meat. That is about the only thing I remember being in the back of that.

Q. Where did you place the range?

A. Just inside the first little room as you go in.

Q. You placed the refrigerator, then, back in the hallway back of the Ice Cream Company?

A. Yes, sir.

Q. The company's main office is in the front?

A. It was in the passageway on down near by the electrical shop.

Q. Mr. Cutting helped you unload that when you brought it in? A. Yes.

Q. He went over to the Veterans of Foreign Wars to help you unload this stove?

A. It was another day, yes.

Q. Did he go over there and help you unload it?

A. I went over there with him, yes. He was driving the truck. [99]

Q. He was driving the truck. Now, that was quite a bit of work, wasn't it, Mr. Hall, to haul those things back and forth?

A. Yes, that's right. You are right.

(Testimony of Andrew Jackson Hall.)

Q. And did Mr. Cutting pay you anything for that?
A. No, sir.

Q. And he hasn't paid you since for that?

A. No, I was working on—it was during my working hours mostly that this was taking place and I was doing this, giving him a hand like that. Of course, I was working for him, and he asked me to do so.

Q. Did you go back and forth with Mr. Cutting quite often before any of these articles were taken?

A. Yes. I was riding with him before and all along during the summer.

Q. And was it during working hours that you went to George Nehrbas and hired the pick-up truck?

A. I wasn't working that day. I was on annual leave that day, a furlough; that day I took a day off.

Q. When did your annual leave start?

A. When?

Q. Yes.

A. Oh, it started at eight o'clock in the morning, or seven o'clock in the morning.

Q. How many days did you have?

A. One day. [100]

Q. One day annual leave? A. Yes, sir.

Q. And that was the day you went and got the pick-up from George Nehrbus and went out to get the scrap?
A. Yes, sir.

Q. What day of the month and what month was it that your annual leave became due?

(Testimony of Andrew Jackson Hall.)

A. You get a day of annual leave any day you wish, sir, if you have any annual leave built up. You can ask for even half a day annual leave, regardless of when it comes due, if you have some accumulated. You can get annual leave by applying for it.

Q. You spent one day of annual leave by going and hiring a truck to go back out to the place where you were working?

A. That's right, to pick up some stuff that I wanted for my own personal benefit.

Q. Now, that stuff that you brought in by the truck you had rented from Mr. Nehrbas, could you have brought that in when you were driving back and forth with Mr. Cutting?

A. Well, I could have, yes.

Q. But you spent \$7.50 to go get a truck to do it on your day off, isn't that right?

A. Well, I wanted to do a little running around otherwise and carry some stuff out to Slater Camp, some stuff I bought. I used the truck for other things, too.

Q. Where did you do this running around? You say you went out to [101] Satellite Field, and then you parked the truck, and it was five thirty when you parked the truck.

Mr. Arend: We object to that, your Honor, as irrelevant to any issue in this case.

The Court: Objection overruled.

A. I don't remember any particular place. I went out to Slater Camp, took my wife to town, and she did some shopping.

(Testimony of Andrew Jackson Hall.)

Q. That was in the forenoon?

A. No, that was after six o'clock.

Q. I thought you stated awhile ago that you had taken the truck back to Mr. Nehrbas after you unloaded this material?

A. I went over to Slater Camp and turned the truck in at possibly eight o'clock that night; that is the best I remember.

Q. Well, now, Mr. Hall, is that the stove that was placed in the Veterans of Foreign Wars' building in that room that you have described?

A. I can only say it is similar to the stove. I didn't check any numbers. I don't have any positive way of identifying the stove or refrigerator.

Q. There was no other stove in that particular building, that Veterans of Foreign Wars' building, when you put this range in there?

A. No, sir.

Q. I believe you testified later that at the request of Mrs. Cutting—I believe she was Mrs. Cutting then—you crated [102] up a stove and refrigerator?

A. Yes, sir.

Q. And you made the crates yourself?

A. Yes, sir.

Q. Where did you crate the refrigerator?

A. In the passageway there, where the—where we had left it.

Q. And did you pack these exhibits, certain exhibits that have been marked for identification here, in that refrigerator?

A. I did.

Q. And was that the refrigerator that had been brought from Satellite Field?

A. Yes, it was the same refrigerator.

(Testimony of Andrew Jackson Hall.)

Q. Had you been maintaining your shop in that building all of the time up until that time?

A. That's right. I was in there almost every night doing some work.

Q. And the refrigerator was in the hallway leading back to your shop all of the time?

A. Yes, sir.

Q. Then you went down to this other place, and you crated the stove up there- You crated the range down at the other place?

A. That's right.

Q. Was there any other material or supplies or property of Mr. and Mrs. Cutting that was in that room down where you put the range? [103]

A. No, I think not.

Q. Did you take the lumber down there to make the crate? A. Yes, sir.

Q. And the crate marked as an exhibit is the crate that you made for the stove?

A. Yes, sir. I can definitely identify the crate.

Q. How do you identify that crate, Mr. Hall?

A. Because I recognize some of the defects in the workmanship there. The pieces didn't exactly fit, and the corners are not fitted together good. I just recognize the workmanship, as the boards are nailed together. And then on the refrigerator, on the back part of the crate on that, if you will notice, it is painted black with the white lines in it, which was a piece of plyboard that had been used for a chart of some kind.

(Testimony of Andrew Jackson Hall.)

Q. Now, did you, after you crated those things up, did you help load them? A. No, sir.

Q. Did you mark the address on those boxes, who they were to go to? A. No, sir.

Q. Who did that? A. I don't know, sir.

Q. Now, going back a little bit, when you took—you say you took the range and the refrigerator upstairs the first time. Who was living up there? [104]

A. Well, no one was living up there at the time.

Q. Who had charge of the place at that time?

A. Well, you mean the apartment upstairs?

Q. Yes.

A. Well, Mrs. Cutting, I believe, and also Mr. Cutting was doing some work up there building that.

Q. That was in May, you said, of '45?

A. May or June—somewhere around there.

Q. Mrs. Cutting had that part of the building?

A. It was Mrs. Henderson.

Q. And when did she become Mrs. Cutting?

A. I don't know. I don't remember the date.

Q. Were you at the wedding, Mr. Hall?

A. Yes, sir.

Q. And you don't remember when it took place, or approximately when it took place?

A. I wouldn't say. August or September, I believe—maybe September.

Q. And you are positive, Mr. Hall, that this range here is a range similar to the one that you hauled over to that house?

(Testimony of Andrew Jackson Hall.)

A. It is the range or one similar. I wouldn't say it was the same one, but it is like the one.

Q. Is the oven in the same place?

A. Yes, sir.

Q. And the other drawer in the same place?

A. Yes, it is. That's right.

Mr. Taylor: If the Court please, could we have a short recess?

(A ten-minute recess was declared, after which court was duly reconvened. All members of the jury were present.)

Q. (By Mr. Taylor): Mr. Hall, according to your statements here, you had handled this range quite a number of times, had you not?

A. Yes, sir.

Q. How many burners are on that range, Mr. Hall?

A. Well, I believe there are three open-face burners, and possibly one for water, is the best I can remember.

Q. How many knobs; how many switches?

A. Well, there would be five, including the one that controls the oven, I think.

Q. Now, going back a little ways, prior to the first time that you hauled the range in, had you any talk with Joseph Lymp and Charles Cors about this matter, about this stove and refrigerator?

A. No.

Q. Or any talk about property that was on the base?

(Testimony of Andrew Jackson Hall.)

A. No, I don't remember ever talking to them about the government property or anything in particular.

Q. How did you happen to know that you were to meet them at Satellite Field at the day that you hauled it in? [106]

A. I didn't know I was to meet them there. The way I understood it, they were hauling all these extra stoves that was out there and not being used; several days there they were carrying them to Ladd Field; they were surplus and at the time there they—I gathered Mr. Cutting just decided at that time, well, that would be a good time to take them in.

Q. Was that the time they were cleaning off Satellite Field to abandon it or vacate it?

A. No. There was nothing I know that was ever brought up about closing the field down. At that time they were just clearing up a lot of surplus around there, as well as Big Delta and Northway.

Q. They were moving all that stuff to Ladd Field at that time?

A. The surplus—some part of the surplus, yes.

Q. Now, when you rented the truck from George Nehrbas—you say it was possibly a three-quarter ton Ford pick-up?

A. It could have been that, yes.

Q. What was the color of that truck?

A. I don't remember.

Q. Black?

A. I don't think it was black. It might have been red. I don't remember. I wouldn't say on the color.

(Testimony of Andrew Jackson Hall.)

Q. And you are positive, then, that you had no previous conversation with Mr. Cors and Mr. Lymp prior to picking up the refrigerator and the stove the first time? [107]

A. No, I hadn't planned anything on it, no, sir.

Q. Now, when you got on that road and turned off it, how many did it take to move the stove from one truck to the other?

A. Oh, I guess it was—the fact is that I don't think I did any of the moving there. I think possibly Chuck and Joe set it over on the other truck. I am not sure. I believe those two fellers did the actual transferring of it over to the truck.

Q. Three fellows or two fellows, did you say?

A. Yes, I think so. I might have helped them a little bit.

Q. Mr. Hall, since you and Mr. Cors and Mr. Lymp had that transaction out there of taking that stove and refrigerator down and switching it, have you ever talked with those men since that time?

A. Oh, I talked with them since, sure. I worked with them and went to the show with them probably. Around town I have talked with them, and when I seen them on the street.

Q. After you found out there was an investigation on, did you talk to them after that?

A. In regards to the stove and refrigerator?

Q. Yes.

A. No, I don't believe that—I don't recall any conversation about the—because Joe Lymp was away and he didn't—he wasn't working out there

(Testimony of Andrew Jackson Hall.)

any more and Chuck was back at Ladd Field, and I didn't come in contact with them very much after the investigation. [108]

Q. How long after that did Mr. Lymp go away, after you moved the stove and the refrigerator?

A. Maybe two or three months.

Q. Between the time you moved that and the time he went away, you had had several conversations with him?

A. I talked with them around work, sure, that's right.

Q. And you had some talks about these particular items?

A. No, I don't remember having any conversation afterwards concerning the stove and refrigerator.

Q. Did you have any conversations about any material that was brought in from the base, from Satellite Field?

A. No, I didn't discuss it with them.

Q. You weren't quite sure of the time that Mr. Baskin came down to the shop to see you. You say it was in the summer of 1945, is that right?

A. Yes, it was in 1945, approximately in the early part of the summer, I believe.

Q. Early part of the summer?

A. I think so.

Q. Then after Mr. Baskin came down there and talked to you and took your motors, you told him all about this transaction that you have testified to here; is that right?

(Testimony of Andrew Jackson Hall.)

A. It was some time after. It wasn't the same day.

Q. It was after he had had the motors for some time, was it?

A. Yes. He approached me on a number of different occasions. [109]

Q. He approached you on different occasions?

A. Or at other times, yes.

Q. And you stated that when Mr. Baskin came there, you felt it was your duty to tell him the truth, tell him how everything had happened; is that right?

A. I felt it my duty to answer the questions he asked me, yes, sir.

Q. Well, Mr. Hall, didn't you feel it was your duty at the time this took place to tell the authorities?

A. Well, along at the beginning of that time, I wasn't sure but what the stove belonged to him; I don't know; there was a lot of material out there. Some of the fellers had bought furniture, beds, and so forth, from M. K., and I know there was some stoves out there. There was a wood and coal range out there that belonged to a private party that was sold to somebody else. A lot of the fellers lived out there; they had their own personal furniture, stoves, and bedding, and things like that. There was transactions going on all of the time.

Q. Mr. Hall, didn't you believe that stuff was hot when you went four miles down from the camp and put it on your truck four miles away?

(Testimony of Andrew Jackson Hall.)

A. Yes, sir, it looked very suspicious to me.

Q. Still you didn't tell the authorities about it at that time? A. No.

Q. You didn't tell them about it until they had caught you with four hot motors? [110]

A. The motors weren't hot motors, so far as I understand today. The motors were all right. The motors didn't have anything whatever to do with it.

Q. You found out they were hot and you took them back to Satellite Field? A. No, sir.

Q. What?

A. No, sir. These motors that——

Q. (Interposing): No, not the motors. I am talking about these other things. You knew they were hot?

A. No, I didn't know they were hot. It looked like it to me. It was very suspicious, but I was just helping him, doing what he said to do under his orders.

Q. But you helped take them back to Satellite Field? A. Yes, sir, I helped then.

Q. And later, knowing they were hot and taken back to Satellite Field, you helped haul them back in again; is that right?

A. He asked me if I would help take the stove and refrigerator back to town, and he said, "I might as well have that stove and refrigerator."

Q. And, in spite of the fact that you thought they were hot, you still helped bring them back in?

A. That's right.

(Testimony of Andrew Jackson Hall.)

Q. And in spite of their being hot, you crated them up and shipped them to Anchorage? [111]

A. I didn't ship them to Anchorage.

Q. You crated them up.

A. When he asked me to do so.

Q. Did Mr. Cutting ask you to crate them?

A. Yes. He asked me one time and Mrs. Cutting asked me the other day. When I didn't do it for a few days, she asked me again.

Q. When did Mr. Cutting ask you to crate the stove? A. When?

Q. Yes. When did they go to Anchorage?

A. I don't remember the date.

Q. September?

A. No. October, I think—the latter part of October.

Q. The first of November?

A. It could have been.

Q. That was approximately the time that you crated them up, then?

A. Yes, shortly before they left.

Q. Isn't it a fact that Mr. Cutting was in Anchorage at the time you crated these things?

A. Yes. After I hadn't crated them for a week or two, she asked me again when I was going to crate them.

Q. Now, going back a little bit, when did you do the job at Mark Sells', Mr. Hall?

A. I don't remember. The summer of 1945.

Q. And was you in partnership with Mr. Cutting at that time in the electrical shop? [112]

A. Yes.

(Testimony of Andrew Jackson Hall.)

Q. How much did that job come to down there?

A. I don't remember. Probably—maybe \$125.00, something like that.

Q. And did you give Mr. Cutting his share of that \$125.00?

A. Yes, sir.

Q. How did you pay him?

A. Well, usually he paid me—Mrs. Cutting would. I would submit a little statement to her. I would give a little itemized account of what the job amounted to, how many hours I had put in and material used on the job. She would type it out and send it out, and the check would come to their post office box, and he would give me the check, and most of the time she would cash the check, and we would determine which part would be to me and which part to her, and we would divide it right there.

Q. How was those checks made out?

A. Cutting and Hall.

Q. And Mrs. Cutting would sign those, endorse them?

A. Mr. Cutting usually endorsed the checks. He would endorse the checks as Cutting and Hall, by P. J. Cutting, and I would get my part of the check.

Q. Did Mr. Cutting get half of that \$125.00?

A. No, I don't remember if he got half of it. He got part of it, compensation for the materials, and so forth. I wouldn't say [113] that he got half of it. I don't remember, but I don't think he got half of it, though.

(Testimony of Andrew Jackson Hall.)

Q. Did you authorize Mrs. Cutting to endorse the checks payable to the partnership of Hall and Cutting?

A. No. No, I don't think—she wasn't authorized to endorse the checks, no, sir.

Q. Now, isn't it a fact, Mr. Hall, that that partnership continued for only a couple of weeks?

A. No. It must have continued longer than that, because I know all along he got part of the money out of my work for all of that summer and even into the fall of '45.

Q. Isn't it a fact that the partnership was discontinued at the time that the four motors was taken from you by Mr. Baskin?

A. No. He might have considered it on his part that it was, but he still received compensation for the jobs that was done. I know that even after he left here, he got money from some of the jobs that was done.

Q. How did you pay him for his share in those jobs: checks or cash?

A. Well, you mean after he left here?

Q. Yes. You say after he left he still paid you?

A. Well, there was one job—there was one job that the feller had just neglected paying his bill. When she was up here, then, on a visit here, she went around to this party and collected it and gave me my part of the check. I don't know who [114] signed that check or how it was paid, but I know that she sent me, by another party, some money in an envelope.

(Testimony of Andrew Jackson Hall.)

Q. What job was that?

A. It was a job down at the Fairbanks Cold Storage.

Q. How much did it amount to?

A. Well, the job amounted to about, I think, \$185.00.

Q. Now, you don't remember the date that the motors were taken from you by Mr. Baskin; is that right?

A. No, I don't remember the date.

Q. How many jobs did you do after those motors were taken?

A. I am doing jobs right along. Now, I work every——

Q. (Interposing): No. I mean up until the time that Mr. Cutting went away.

A. I don't remember how many jobs we did.

Q. Were you working at Ladd Field, too?

A. I was working at Satellite Field, and Sundays and holidays and evenings I was doing small jobs.

Q. And you don't know how many you did do?

A. No. It might have been fifteen, twenty, jobs, maybe.

Q. Mr. Hall, have you ever been convicted of a crime?

A. No, sir.

Q. Never?

A. I have never been convicted of a crime, sir.

Mr. Taylor: That is all, Mr. Hall. [115]

(Testimony of Andrew Jackson Hall.)

Redirect Examination

By Mr. Arend:

Q. You told Mr. Taylor that at the time you were loading this scrap onto your pick-up, in the spring of 1945 at Satellite Field, another truck in charge of Lymp and Cors was also loading the refrigerator and range. Why didn't you load the refrigerator and range directly onto your pick-up while you were on Satellite?

A. Well, at this time the M.P.s at the gate were checking pretty closely the property that was going out, and I gathered he didn't want the M.P.s at the gate to know that this range and refrigerator would be on this private car, and it was to make it look like the range and refrigerator was going to Ladd Field with the other things that were going to Ladd Field.

Q. What was Mr. Cutting's relationship to you on the job at Satellite Field?

A. Well, he was my foreman, my supervisor.

Q. You took orders from him, did you?

A. Yes, sir.

Q. Now, is there only one time in the spring of 1945 that you rented this pick-up from Nehrbas?

A. That's right, sir.

Q. Did Mr. Cutting ever mention to you any tally out sheets for the refrigerator and range to get them off Satellite Field?

A. You mean when we started to bring them out? [116]

Q. At any time, before or after.

(Testimony of Andrew Jackson Hall.)

A. There was a question of a tally out sheet concerning the stove and refrigerator, yes, after he had gone to Anchorage.

Q. Where did this conversation occur?

A. Well, Mrs. Cutting approached me——

Q. (Interposing): No, I am talking now about Mr. Cutting regarding tally out sheets.

Mr. Taylor: Will you please read the question?

(The question was read by the reporter:
Where did this conversation occur?)

Mr. Taylor: We object to it until the proper foundation is laid. I also believe it is improper redirect examination.

The Court: Objection overruled.

Q. (By Mr. Arend): Just tell us, now, where this occurred, this conversation between you and Mr. Cutting? A. At Ladd Field, sir.

Q. When? A. In July, 1946.

Q. All right. What was said regarding tally out sheets?

A. He just asked me what I did with the tally out sheets that he sent up here to be placed in the files at Satellite Field?

Q. Do you know anything about such tally out sheets?

A. Yes, I did receive some tally out sheets.

Q. What did you do with them?

A. Well, I gave them to Mr. Baskin. [117]

Q. Did you ever make a written statement to Mr. Baskin regarding the interviews he had with you, covering the interviews that he had had with you, a signed statement

(Testimony of Andrew Jackson Hall.)

A. I signed a—let's see—I don't believe I understand exactly.

Q. Did you ever put anything in writing about what you have testified to here?

A. No, sir, I never wrote anything to Mr. Baskin.

Q. Did you ever sign a statement for him?

A. Yes, I signed a statement for Mr. Baskin.

Q. Did you ever sign a statement for him?

A. Yes, I signed a statement for Mr. Baskin.

Q. You mean you didn't write out the statement? A. No, sir.

Q. Has Mr. Cutting ever complained to you about a back injury of his?

A. Not directly to me. I have heard him mention it.

Mr. McCutcheon: I object to it as improper re-direct examination, your Honor.

Mr. Arend: Your Honor, there has been a lot of testimony about these two men lifting this refrigerator and range.

Mr. McCutcheon: There hasn't been any testimony about a back injury, your Honor.

The Court: Objection overruled.

Mr. McCutcheon: Exception.

A. I remember—I remember hearing him mention that his back was injured in a plane accident, yes, sir. [118]

Q. Have you ever seen him exert himself unduly physically other than the times that you have

the first time

(Testimony of Andrew Jackson Hall.)

testified to him helping you lift this range and refrigerator, identification numbers 2 and 3 of the government?

Mr. McCutcheon: We make the same objection, your Honor.

The Court: All right, I will sustain it.

Q. How much do you weigh, Mr. Hall?

A. About two hundred pounds.

Q. How tall are you?

A. About six feet.

Q. Is Mr. Cutting a bigger or smaller man than you are?

A. He is larger, I believe, than I am.

Mr. Arend: Now, if the Court please, we ask permission to have Mr. Hall and Mr. Berrett carry the range and the refrigerator for evidence before the jury.

Mr. Taylor: We object to it, your Honor.

The Court: All right, go ahead.

(The range and refrigerator were lifted and carried by Mr. Hall and Mr. Berrett.)

Mr. Arend: Now, your Honor, I would like to have the record show that the witness, Andrew Jackson Hall, and Mr. William E. Berrett, who is about the same size as the witness, carried the range and the refrigerator.

The Court: Perhaps you had better ask the witness and have him testify. [119]

Q. (By Mr. Arend): Mr. Hall, were you able with the assistance of Mr. Berrett to carry the range?

A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. Here in the courtroom? A. Yes, sir.

Q. Were you able, with the assistance of Mr. Berrett, to carry the refrigerator here in the courtroom? A. Yes, sir.

Q. How does Mr. Berrett compare with you in size and weight?

A. Well, I believe I am a little heavier than he is, sir.

Q. Who asked you the first time to crate the range and the refrigerator?

A. Mr. Cutting.

Mr. Arend: That is all.

Mr. Taylor: That is all.

(Witness excused.) [120]

DENNY G. BREID

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Denny G. Breid.

Q. Where do you reside, Mr. Breid?

A. 611 Fifth.

Q. Here in Fairbanks? A. Fairbanks.

Q. Where are you employed?

A. Ladd Field.

Q. What position do you hold there?

A. I am chief of supply, of Post Engineers Supply.

(Testimony of Denny G. Breaid.)

Q. Mr. Breaid, can you state as to whether or not the government has ever owned any Westinghouse refrigerators or ranges at Ladd Field?

A. Oh, yes. The Engineers have had just about every make and type.

Q. Can you state whether any Westinghouse electric refrigerators or ranges have ever been turned over to surplus property for disposal to persons other than the army personnel?

A. Well, to the best of my knowledge, I would say that they haven't [121] because there has always been a shortage.

Q. And what other method would there be of disposing of such equipment at Ladd Field to persons other than army personnel?

A. Well, the only way that it could possibly be disposed of would be that, during the war with the shortage of replacement parts, that, say, if a stove is damaged or is worn out or part of it is broken, well, if they have a replacement, they will replace the unit with another unit and then take that back to a warehouse, and that in turn, if the parts are not available, then that is taken down finally and put into the salvage, turned over to the salvage officer for his disposal. We don't control that.

Q. You don't control that? A. No.

Q. And that would be if something were damaged on the equipment and you had no replacements?

A. That's right. It wouldn't necessarily mean that it would have to be damaged. Say, if on a

(Testimony of Denny G. Braid.)

stove if, say, one of the burners is out and if the burner is necessary and if they can't get the parts, the stove as a whole is useless.

Q. Would any usable property of that type be turned over to salvage? A. Well, usually not.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.) [122]

HOWARD N. FOWLER

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your full name, please.

A. Howard N. Fowler.

Q. Where do you live, Mr. Fowler?

A. Anchorage.

Q. What is your address there?

A. 214 Fifth.

Q. Have you always lived there?

A. I have been there for about six years in the same house.

Q. Are you acquainted with Mr. Cutting, the defendant here? A. Yes.

Q. Percy J. Cutting? A. I am.

Q. How long have you known him?

A. About three years.

(Testimony of Howard N. Fowler.)

Q. Did you have a conversation with Mr. Cutting at Anchorage on or about the 20th day of November, 1945, relative to plywood crates, boxes?

A. Yes.

Q. Who was present when you were talking to him? State if you can? [123]

A. I think he was over at my house when we talked about it, as I recall, but I don't know whether my wife was there or not. I can't recall. We were in the house, I am pretty sure, as I remember it.

Q. Can you state whether Mrs. Cutting was there?

A. No, she wasn't there at the house.

Q. And what was the conversation?

A. He said he had some boxes of household goods that he would like to store temporarily until he found a place to live and that he was figuring on moving to the post and that, if he did accept this house out there, that he didn't want to take them with him and asked if I could store them for him at my place temporarily until he got squared around, and I said that I would.

Q. What did you do after the conversation?

A. How do you mean that, sir?

Q. Did you do anything about the conversation, after you completed the conversation?

A. Not right then. I think it was the next day that we moved the stuff.

Q. What did you move?

(Testimony of Howard N. Fowler.)

A. Well, we had two good sized boxes, and I brought them up and put them in a little storage house that I have there.

Q. Where is that storage house?

A. It is on the back of my lot. It is a place where I store all [124] my own excess stuff.

Q. How long did the boxes remain there?

A. Oh, I imagine a couple of weeks or more, as I recall.

Q. Do you know what happened to them then?

A. Well, they were taken away from there.

Q. By whom?

A. By the F.B.I. agents. They came over and took them away.

Q. Did you know what the boxes contained at the time you helped move them,

A. No, I didn't.

Q. Do you know now what they contained?

A. I did when they came to move them.

Q. Can you state the time when the F.B.I. came to move the boxes, approximately?

A. It was in the afternoon, if that is what you mean.

Q. I would like the month and the day, if it is possible, and the year.

A. As I recall—I don't recall the date, but it was around approximately a couple of weeks after they were put in there.

Q. That would be in December?

A. That would be in December some time, yes.

Q. How did you discover the contents then?

(Testimony of Howard N. Fowler.)

A. Well, they came over and opened them up, and I happened to be on my way to work, and I was present when they took the top off of the boxes.

Q. And what was in the boxes?

A. Well, there was a refrigerator in one and a stove in the other.

Q. Did you give the officers permission to open the boxes? A. Yes, sir.

Q. Did you give them permission to take them away? A. Yes.

Q. Mr. Fowler, I would like to have you step down here and examine government's Identifications 6 and 7, being two plywood boxes, crates.

(The witness examined the above-mentioned identifications.)

Q. Are these the crates you have testified about?

A. Well, they look like it.

Q. Then, will you examine identifications 2 and 3, being a range and refrigerator? Are those two items the range and refrigerator that you have just testified about?

A. Well, I don't know. They were in the box. Just the lid was off of the box, but they were white in color.

Q. You may take the stand again.

(The witness returned to the witness stand.)

Mr. Arend: You may cross-examine.

(Testimony of Howard N. Fowler.)

Cross-Examination

By Mr. Taylor:

Q. Mr. Fowler, I didn't get just exactly the date that you say you saw Mr. Cutting in Anchorage and had a conversation about these boxes. [126]

A. Well, it was approximately the 7th of December, as I recall.

Q. The early part of December?

A. The early part of December some time.

Q. And the reason you state— believe you stated there was a reason Mr. Cutting stored them. Was it that he was going to the base and had a place to live at the base; is that right?

A. He was unsettled at that time, and he didn't want to have to move them several times, he said, until he was definitely established.

Q. Were there some boxes besides these?

A. No, not at my place. It was just the two. I had just barely room enough for the two.

Q. What kind of a building was it that you stored them in?

A. Originally it was a tent house, and I boarded it up.

Q. And did the F.B.I. men ask for permission to go in there? A. Yes, they did.

Q. And after they went in, what did they do?

A. Well, they brought the boxes out in the yard and took the lids off of them.

Q. And did they put them back then?

A. Yes, they did, and then they called for them later.

(Testimony of Howard N. Fowler.)

Q. They put them back into your building. The time that they opened these boxes belonging to Mr. Cutting, did they serve a search warrant on you for permission to open those boxes?

A. No, they didn't. [127]

Q. Did you give them permission to open boxes belonging to Mr. Cutting?

A. Yes. They were on my property, and I felt I could give them permission. I knew that they could make arrangements pretty quick if I didn't give them permission.

Mr. Taylor: That is all, Mr. Fowler.

Mr. Arend: That is all.

(Witness excused.) [128]

Mr. Arend: Your Honor, I would like to have permission to recall the witness Zobel for two questions.

The Court: Very well.

BERNARD J. ZOBEL

called as a witness on behalf of the plaintiff, having been previously sworn, was examined further and testified as follows:

Direct Examination

By Mr. Arend:

Q. Mr. Zobel, yesterday you told the jury that you hauled a range and a refrigerator from Ladd Field to Satellite Field at the request—well, I will say and placed them in a stout house at Satellite Field? A. That's right.

(Testimony of Bernard J. Zobel.)

Q. Where did you get those two items at Ladd Field?

A. They came from the building that was commonly called the Engineers' Building. I think it is generally recognized as building 172. It is the building with four wings to it.

Q. Which wing did you take them from?

A. It was from the electrical, the part having the electrical supplies, I believe, and that would be the second wing from the east side.

Q. You also stated that you used the range and refrigerator some while you were there at Satellite?

A. Well, I believe I mentioned I was one of a group, and we were [129] more or less batching out there.

Q. Was the range in usable condition?

A. Yes, I think so.

Q. Was the refrigerator?

A. Yes, I think so.

Mr. Arend: That is all.

Mr. Taylor: No questions.

(Witness excused.)

The Court: In a few seconds, we will take an adjournment until two o'clock. In the meantime, Ladies and Gentlemen of the Jury, remember don't talk about the case to anyone or permit anyone to talk about the case to you. Keep your mind perfectly free from an opinion until the case is finally submitted to you.

(Thereupon an adjournment was taken until two o'clock p.m., November 13, 1946, at which time court was duly reconvened. All members of the jury were present, and the following proceedings took place:)

The Court: Are counsel ready to proceed?

Mr. Arend: Ready, your Honor.

Mr. Taylor: Ready.

Mr. Arend: If the Court please, there is a stipulation on file in this case, signed by counsel for both parties, agreeing that the deposition of the government's witness, Leo Hardy, be taken and used at the trial of this case. The [130] commission was issued, and it has been returned. The deposition is on file likewise. May we have permission to read it at this time?

The Court: Read your stipulation first.

Mr. Arend: "In the District Court for the Territory of Alaska, Fourth Judicial Division. United States of America vs. Percy James Cutting. No. 1268 Cr. Stipulation to Take Deposition.

"It is hereby stipulated by and between Harry O. Arend, United States Attorney, and Warren A. Taylor, attorney for the defendant, Percy James Cutting, that the deposition of Leo Hardy, witness Mary McDonnell, a Notary Public in and for the Territory of Alaska, at Fairbanks, Alaska, at 10:00 o'clock, a.m., on October 30, 1946, or at such other time or times as may be agreed upon between said attorneys, said depositions to be taken upon oral examination and when returned and published may

be read by either party at the trial of the above entitled criminal cause.

“Dated at Fairbanks, Alaska, this 29th day of October, 1946.

/s/ HARRY O. AREND,

United States Attorney,

/s/ WARREN A. TAYLOR,

Attorney for Defendant.”

“Filed in the District Court, Territory of Alaska, 4th Division, October 29, 1946, John B. Hall, Clerk, By Olga T. Steger, Deputy.”

Mr. Arend: Will counsel waive the reading of the commission?

Mr. Taylor: Yes, I will.

(Said commission is in words and figures as follows, to wit:)

“In the District Court for the Territory of Alaska, Fourth Judicial Division.

“United States of America vs. Percy James Cutting, No. 1268 Cr.

“Commission to Take Deposition.

“The President of the United States of America:

“To Mary McDonnell, a Notary Public in and for the Territory of Alaska, residing at Fairbanks therein:

“Whereas, the above named plaintiff and defendant have, by their respective counsel, stipulated and agreed that the deposition of Leo Hardy, a witness for the plaintiff in the above entitled cause, may be taken before you at Fairbanks, Alaska, at 10:00

o'clock a.m., on October 30th, 1946, or at such other time or times as may be agreed upon between you and said attorneys, said depositions to be taken upon oral examination; [132]

“Now, therefore, reposing full confidence in your prudence and fidelity, you, Mary McDonnell, are hereby appointed Commissioner to examine said witness and hereby authorized and required to cause said witness to appear before you at the time and place designated or at such other time or times as may be agreed upon between said attorneys and yourself and diligently examine said witness orally under the oath and affirmation of said witness by you first in that behalf duly administered; and the said testimony of said witness when so taken shall be reduced to writing and signed by said witness and certified by you under your official seal; and the said testimony, together with this Commission, you shall then return to the Clerk of the above entitled Court in a sealed envelope at all convenient speed,

“Witness the Honorable Harry E. Pratt, Judge of the above entitled Court, at Fairbanks, Alaska, this 29th day of October, 1946.

[Court Seal]

/s/ JOHN B. HALL,
Clerk.

By /s/ OLGA T. STEGER,
Deputy Clerk.

“Filed in the District Court, Territory of Alaska, 4th Div., Oct. 31, 1946.

/s/ JOHN B. HALL,
Clerk.”

Mr. Arend: I ask permission for Mr. Berrett to read the deposition, your Honor.

The Court: Very well. [133]

(The deposition of Leo Hardy was read by Mr. Berrett as follows:)

“In the District Court for the Territory of Alaska, Fourth Judicial Division.

“United States of America vs. Percy James Cutting, No. 1268 Cr.

“DEPOSITION OF LEO HARDY.

“Be it remembered that on Wednesday, the 30th day of October, 1946, at the hour of 10:00 o'clock a.m., at Fairbanks, Alaska, there appeared Leo Hardy, a witness on behalf of the plaintiff in the above entitled cause, before Mary McDonnell, a Notary Public in and for the Territory of Alaska, residing at Fairbanks therein; that there were also present Harry O. Arend, United States Attorney, and Warren A. Taylor, Attorney for the defendant, Percy James Cutting.

“Whereupon the following proceedings were had:

“LEO HARDY

called as a witness on behalf of the plaintiff, having been first duly sworn by the commissioner, was examined and testified as follows:

“Direct Examination

“By Mr. Arend:

“Let the record show that both parties reserve the right to object to all questions for relevancy, competence and materiality. [134]

(Deposition of Leo Hardy.)

“Q. State your name and address.

“A. Leo Hardy, 129 Hall Street.

“Q. Fairbanks? A. Fairbanks, Alaska.

“Q. What is your occupation?

“A. Trucker.

“Q. How long have you followed that occupation?

“A. Well, off and on ever since I was twelve years old.

“Q. Do you know Mrs. Audrey Henderson Cutting? A. I just met her once.

“Q. Do you know Percy James Cutting?

“A. No, I don't.

“Q. Did you have any dealings with Mrs. Cutting on November 7, 1945? A. Yes, I did.

“Q. Where at?

“A. Here at Fairbanks, over the telephone.

“Q. State what your dealings were with Mrs. Cutting?

“A. She called me up and said she understood I was making a trip to Anchorage, and wanted to know if I could haul household goods down for her, and I told her that I was merely delivering the truck for the N. C. Company; it was a new truck they were transferring from this store to the store in Anchorage; and I told her she would have to make arrangements with the N. C. Company, and if it was all right with them it was all [135] right with me, that I had nothing to say about it.

“Q. Did you have any further dealings with her?

(Deposition of Leo Hardy.)

“A. Only when I loaded up the goods, she happened to be there and told me what boxes to take.

“Where did you load the goods?

“A. At the Moose Hall, the main entrance and on the ground floor. Two boxes I picked up at the back end of the Vet's Club.

“Q. Did you know whose goods those were?

“A. They were marked P. J. Cutting; they were all marked in blue crayon.

“Q. How were they wrapped or packed?

“A. They were all crated and boxed, some gasoline boxes, some wooden boxes and some plywood boxes.

“Q. How many plywood boxes were there?

“A. I distinctly remember two; there might have been more; I don't remember.

“Q. How do you remember those two?

“A. They were quite heavy and after trying to load them by myself we went over to the Fairbanks Cold Storage and got two fellows to help load the two heavy boxes.

“Q. Do you know what those two boxes contained? A. No, I don't.

“Q. Can you state approximately how much they weighed?

“A. Well, I would say between four and five hundred because all the four of us could do was to lift them up. [136]

“Q. Have you ever moved a Westinghouse electric range?

“A. Yes, I have, from the depot over town.

(Deposition of Leo Hardy.)

“Q. Have you ever moved a Westinghouse electric refrigerator?

“A. I may not have moved a Westinghouse. I moved a General Electric.

“Q. Now, could either of those plyboard boxes have contained an electric range, judging by the weight of the boxes?

“Mr. Taylor: I object to that as calling for a conclusion of the witness.”

Mr. Taylor: We renew the objection at this time, your Honor.

The Court: Objection sustained.

“Q. Could either of the boxes contain an electric range judging by the weight of the boxes?

“A. Judging by the weight, I would say it was heavy enough for an electric range.

“Q. Could one box have contained an electric refrigerator?

“A. Judging by the weight, it could have.

“Q. Were the boxes of the same size?

“A. No, they were different shape.

“Q. What do you mean ‘different shape?’

“A. They weren’t the same dimensions—I mean one was almost square, and the other higher than it was wide and deep.

“Mr. Arend: I would like to have the commissioner mark this object as Plaintiff’s Identification 20, and that the [137] commissioner date and initial the exhibit marked.

(Deposition of Leo Hardy.)

“(Thereupon the object above referred to was marked Plaintiff’s Exhibit 20 for identification.)

“Q. Mr. Hardy, will you take a look at Plaintiff’s Exhibit 20, appearing to be a plywood box; have you ever seen that before?

“A. Well, it looks like the box I hauled.

“Q. That you hauled from where?

“A. From the Moose Hall to Anchorage.

“Q. For Mrs. Cutting? A. Yes.

“Q. They were marked like that?

“A. All of her boxes were marked with blue crayon.

“Q. What marking? What is the markings; what does it say?

“A. P. J. Cutting, Anchorage, Alaska.

“Mr. Arend: I would like to have the commissioner date and initial this box which we ask to have marked Plaintiff’s Identification 21.

“(Thereupon the object above referred to was marked Plaintiff’s Exhibit 21 for identification.)

“Q. Mr. Hardy, will you examine Plaintiff’s Identification 21, appearing to be a plywood box? Have you ever seen that before?

“A. Well, it could be.

“Q. And is that one of the boxes that you moved for Mrs. Cutting from Fairbanks to Anchorage?

(Deposition of Leo Hardy.)

“A. Well, I moved one just like that. It is kind of a bad thing; I don’t know what to say; I can’t say it is the same.

“Q. Did you have any identification marks on the box?

“A. Nothing, absolutely positive. I didn’t pay too much attention to that.

“Q. I call your attention to the blue crayon markings: P. J. Cutting, Anchorage, Alaska.

“A. I looked at all the names on the boxes. There were other boxes of hers. I looked at the markings before I loaded them.

“Q. Did they all have that marking?

“A. Yes, they did.

“Q. What did you do with the two heavy boxes that you testified to? What did you do with the two heavy plywood boxes?

“A. I put them on the truck and hauled them to Anchorage.

“Q. What did you do with them at Anchorage?

“A. I parked in front of the N. C. Company and told Mr. Peterson that Mrs. Cutting would be down in a few days, and he said he could run the truck in the garage and that he would not disturb the crates until she called for it.

“Mr. Arend: That is all.

“Cross-Examination

“By Mr. Taylor:

“Q. Mr. Hardy, what would you say was the date that Mrs. Cutting called you in regard to the boxes that you testified to?

(Deposition of Leo Hardy.)

“A. A few days before the seventh—two or three days before [139] the seventh. I don’t recall just what day she called me on the phone.

“Q. Did you ever meet Mrs. Cutting before personally? A. No, I didn’t.

“Q. How did you know it was Mrs. Cutting talking on the phone?

“A. She told me it was.

“Q. She informed you over the phone it was Mrs. Cutting talking? A. Yes.

“Q. Was it the seventh that you went to the Moose Hall to pick up this load of freight?

“A. Yes.

“Q. You stated in response to a question by Mr. Arend that you picked up two boxes at the Veterans’ Club. Where is the Veteran’s Club?

“A. Just this side of the Glover Tire Shop on Second Avenue.

“Q. Was that where the two boxes marked Plaintiff’s Identification 20 and 21 were?

“A. No.

“Q. Where were they?

“A. At the Moose Hall.

“Q. What did you pick up at the Veteran’s Club?

“A. Two boxes there. I don’t know what they were.

“Q. They weren’t these two boxes we have called your attention to? A. No.

“Q. You say those are quite heavy, Mr. Hardy?

“A. Yes.

(Deposition of Leo Hardy.)

“Q. Who helped you? You said somebody was with you. A. Yes.

“Q. Who?

“A. Jack Gould, who works at the N. C. shipping room. He came down from the N. C. to help me load, and we got two fellows from the Fairbanks Cold Storage; one I think was Perry Cotton.

“Q. Do you know Mr. Hall, an electrician here? Was he the other one?

“A. I don't think so—it could have been. I don't know the men's names, and I can't recall as I don't know him by name.

“Q. Was Mrs. Cutting present when you loaded this freight, the goods you hauled?

“A. She wasn't when I first went down. She showed up after I went down. I loaded a few smaller boxes and she came down.

“Q. She was there when you loaded the two big boxes?

“A. Yes. She came over to the back end of the other place.

“Q. Referring to the two large boxes marked Identification 20 and 21, were they at the Third Avenue—Second Avenue end of the building in front of Mt. McKinley Ice Cream?

“A. No, on the side street. Wickersham, isn't it?

“Q. Yes, it is.

“A. At the side, next to the Cold Storage entrance.

(Deposition of Leo Hardy.)

“Q. I believe you stated in response to a question by Mr. Arend that those are boxes similar in appearance to the ones you loaded down there?

“A. Yes.

“Q. You realize it would be very easy for somebody else to write ‘P. J. Cutting’ on the box?

“A. Yes, it could.

“Q. Upon your arrival at Anchorage, did you see Mr. Cutting? A. No, I didn’t.

“Q. Do you know Mr. Cutting?

“A. No, I don’t.

“Mr. Taylor: I believe that is all.

“Redirect Examination

“By Mr. Arend:

“Q. Did you have any conversation with Mrs. Cutting about the goods you were loading at the time you were actually loading them there?

“A. I suppose I had some, but I can’t think of anything important. I know there was one small box that was heavy, and I went to pick it up and she said to be careful—‘Those are tools in there.’ That is all I can remember off-hand and just passing the time of the day.

“Mr. Arend: That is all.

“Mr. Taylor: That is all.

“/s/ LEO HARDY.

“Subscribed and Sworn to before me this 30th day of October, 1946.

“[Seal] /s/ MARY McDONNELL,

“Notary Public for the Territory of Alaska. My Commission expires June 28, 1950. [142]

(Deposition of Leo Hardy.)

“Certificate of Commissioner

“United States of America,

“Territory of Alaska—ss.

“I, Mary McDonnell, Notary Public in and for the Territory of Alaska, duly appointed as commissioner to take the deposition of Leo Hardy, a witness for the plaintiff in the above-entitled action, and pursuant to the foregoing commission, do hereby certify that on the 30th day of October, 1946, before me at Fairbanks, Alaska, personally appeared the said witness, Leo Hardy, to me known and known to me to be the witness described in the said Commission, and thereupon said witness was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that, as the said testimony was taken by me, it was reduced to writing, and when concluded, the said testimony was read to said witness who signed the same, and made oath to the same as being true in all respects; and each of the answers to said interrogatories propounded to said witness as hereinabove set forth is the exact testimony given by said witness before me as commissioner to take said testimony, and the whole thereof.

“In Witness Whereof, I have hereunto set my hand and affixed my official seal this 30th day of October, 1946.

“[Seal] /s/ MARY McDONNELL,

“Notary Public for the Territory of Alaska. My Commission expires June 28, 1950.” [143]

Mr. Taylor: If the Court please, just to keep the record straight, I believe we have these two boxes marked for identification, I believe six and seven, and we also have them marked 20 and 21.

Mr. Arend: Well, then, we would like to have the record show that the commissioner's Identification No. 20 is the Plaintiff's Identification No. 7 in this case. That is the refrigerator box.

The Court: Very well.

Mr. Arend: And the commissioner's Identification No. 21 is the plaintiff's Identification No. 6 in this case.

The Court: Very well.

Mr. Taylor: I just did that so there wouldn't be any cross-reference to it, your Honor. I didn't want to be technical about it. [144]

STANLEY D. BASKIN

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you please state your name?

A. Stanley D. Baskin.

Q. Where is your residence?

A. Huntsville, Texas.

Q. What is your occupation?

A. I am an attorney.

Q. What was your occupation in 1945?

(Testimony of Stanley D. Baskin.)

A. I was a special agent of the Federal Bureau of Investigation.

Q. Where were you stationed at that time?

A. Fairbanks, Alaska.

Q. Are you acquainted with the defendant, Percy James Cutting, sitting here at the table?

A. I am.

Q. And do you know Audrey Henderson Cutting, his wife? A. I do.

Q. Did you have a conversation with Mr. Cutting on December 6, 1945, relative to a Westinghouse electric range and electric refrigerator?

A. I did. [145]

Mr. Taylor: Just a moment. What was the date, Mr. Arend?

Mr. Arend: December 6, 1945.

Q. (By Mr. Arend): Where did the conversation take place?

A. In the office of the Federal Bureau of Investigation at Anchorage, Alaska.

Q. Who was present?

A. Percy James Cutting, Hugh C. Norton, the special agent of the F.B.I., and myself.

Q. And did you and Mr. Norton identify yourselves to Mr. Cutting at that time?

A. We identified ourselves as special agents of the Federal Bureau of Investigation.

Q. Was the conversation reduced to writing?

A. No, it wasn't.

Q. What was said in the conversation?

(Testimony of Stanley D. Baskin.)

A. I informed Mr. Cutting that anything he stated could be used against him and that he did not have to make any kind of a statement. I interviewed him regarding the Westinghouse refrigerator and Westinghouse electric range, and I asked him if he did not, on or about May 18, 1945, have Joe Lymp and Andrew Hall take a refrigerator, the Westinghouse refrigerator and electric range, from Satellite Field to Fairbanks, Alaska; he said that he didn't. I asked him further if he ever had a Westinghouse electric range or refrigerator in the Moose Hall, in his apartment in the Moose Hall, and he stated that he had not. I further asked him if Andrew Hall ever crated a range or refrigerator, a Westinghouse range or refrigerator, for him on or about November 1, 1945, and he stated that he did not. I asked him if the Northern Commercial Company, through its agent, Mr. Hardy, took *any* of his Westinghouse range or refrigerator from Fairbanks to Anchorage, Alaska, and if that was part of his personal effects, and he said that it wasn't. I also asked him, along with Mr. Hugh Norton, if, on November 20, 1945, he did not take two boxes from the Northern Commercial Company warehouse in Anchorage to a little cabin at the rear of Mr. Howard Fowler's home at 214 Fifth Avenue in Anchorage, and he stated that he did not. I also asked Mr. Cutting if he had any receipts or any bills of sales or other documents that would show he was the owner of or had purchased or obtained a Westinghouse electric range or refrigera-

(Testimony of Stanley D. Baskin.)

tor, and he said that he did not. Throughout the interview he consistently denied he had any information regarding a Westinghouse refrigerator or Westinghouse range.

Q. Did you have a conversation with Mr. Cutting at any other place on that day?

A. On the same day, about nine o'clock, I asked him if he would permit——

Q. (Interposing) Just a minute. Now, where was that?

A. That was in the office of the F. B. I. I asked Mr. Cutting if he would permit Mr. Norton and I to search his home, which he said that we could. We then went to his residence at 733 Fifth Avenue, where we met Mrs. Cutting, and we searched his residence, and we did not find a range or refrigerator there.

Q. Did you have any conversation with Mrs. Cutting there at that time? A. We did.

Q. Was Mr. Cutting present? A. He was.

Q. All right. And what was said in that conversation?

A. I asked Mrs. Cutting if she had an electric range or Westinghouse refrigerator at Fairbanks, Alaska, and if it was in their apartment in the Moose Hall, and her first statement was, "Why do you ask about a range or refrigerator," and she declined to answer my questions for a few minutes, and finally stated that she didn't know anything about one; that she had never had a range or refrigerator in her apartment in the Moose Hall.

(Testimony of Stanley D. Baskin.)

She said the only thing she had up there was a little hot plate. I also asked her if she had any invoices or bills of sale or documents showing that she owned a refrigerator or an electric range, and she could not produce any; she said she did not have any; the only thing that she did produce was an invoice of five pieces of celotex that she had purchased from the Independent Lumber Company in Fairbanks; it was dated April 23, 1945. She also showed me that she had some household stuff in a cupboard and stated that she needed a range and didn't have one, or rather, a refrigerator and didn't have one.

Q. Now, Mr. Baskin, will you please step down here and examine Government's Identifications 2 and 3, being two plyboard boxes. I am sorry, six and seven, Government's Identifications 6 and 7.

A. Those are——

Q. (Interposing): Just a minute. And will you also, while you are down here, please examine Government's Identifications 2 and 3, being a range and refrigerator. And while you are down here, will you also examine Government's Identification 8, being a pair of boots, and No. 9, being a pack sack, and No. 10, being a pair of leather pants.

(The above-mentioned identifications were examined by the witness.)

Q. Now, you may take the stand again. Have you ever seen Identifications 6 and 7 before, the boxes?

A. Yes.

(Testimony of Stanley D. Baskin.)

Q. When and where?

A. I saw those on December 7, 1945, and in a cabin behind Mr. Howard Fowler's home at 214 Fifth Avenue, Anchorage, Alaska.

Q. Have you ever seen Identifications 2 and 3 before, the range and refrigerator? A. Yes.

Q. Where did you see them? [149]

A. I examined them at the same time that I saw the boxes.

Q. Where were they?

A. They were inside those crates, those boxes there, that is, those exhibits 6 and 7.

Q. Did you obtain anyone's permission to examine the contents of the boxes?

A. I obtained the permission of Mr. Howard Fowler.

Q. Did he identify himself to you?

A. Yes, he told us who he was; that his name was Howard Fowler. That is, we obtained the permission of Mr. Fowler and his wife, Mrs. Fowler, both of them together.

Q. Did you examine the contents of the refrigerator? A. I did.

Q. What did you find in the refrigerator?

A. I found the pack sack, the two flying boots, the pair of flying trousers; there is another little coat that had Sylvia Henderson marked on it, and there was another little coat in there. There was a toaster and a hot plate.

Q. Were there any kind of wrappings around the refrigerator and stove?

(Testimony of Stanley D. Baskin.)

A. There was a down blanket and on the stove was what appeared to be a khaki blanket. The down blanket was wrapped around the refrigerator. The khaki blanket was on the top and in front of the range. [150]

Q. Mr. Baskin, did you find——

Mr. Arend: Will you please give this an identification number?

(Thereupon the down blanket was marked Plaintiff's Identification No. 11 by the clerk of the court.)

Q. Mr. Baskin, have you examined this down blanket which now bears Identification No. 11? Can you identify that?

A. I didn't put any marks on it, but it was wrapped around the refrigerator inside the box, inside the crate.

Q. Can you state whether this is the blanket that you found around it?

A. It is, because I took it out yesterday.

Mr. Arend: We would like to have this also marked for identification.

(Thereupon a blanket was marked Plaintiff's Identification No. 12 by the clerk of the court.)

Q. I show you Government's Identification No. 12 and ask you if you have ever seen that before?

A. Well, I have seen one just like it that was wrapped around the top and the front of the electric range which I took off of the range yesterday.

(Testimony of Stanley D. Baskin.)

Q. At the time you examined the range, did you examine it for serial numbers? A. Yes, I did.

Q. Did you find any serial numbers on the range. A. I did. [151]

Q. What number did you find?

A. The serial number on the range is 830175.

Q. Did you find that number there on the 7th of December, 1945? A. I did.

Q. And have you checked it now to see if it bears that number? A. I have, and it does.

Q. It does. On December 7, 1945, did you find a serial number on the refrigerator?

A. There was no serial number on the refrigerator.

Q. What did you find in that respect?

A. We found a serial number on the refrigeration unit in the refrigerator. The serial number of the refrigerator had been removed.

Q. Do you know who removed it?

A. No, I don't.

The Court: Just a moment. Look at the indictment here where it mentions the serial number of the range and see if this serial number in the Indictment is the same as you found in Anchorage that you have been speaking about.

The Witness: The electric range, it states in the indictment, bears serial number 831075, and the serial number on the range, as I have examined it, is 830175.

The Court: The same?

(Testimony of Stanley D. Baskin.)

The Witness: The same number.

Q. (By Mr. Arend): What did you do with the plywood boxes that you found at Fowler's residence and the contents thereof?

A. I nailed the boxes back together and put them back in the cabin behind Mr. Fowler's house and locked it up.

Q. Do you know what happened finally, what disposition was made of them?

A. They were subsequently taken to the Northern Transfer Company warehouse and held there until they were shipped to Fairbanks to me in February of 1946.

Q. Are you familiar with the handwriting of Percy James Cutting?

A. I am familiar with the handwriting which he acknowledged was his handwriting.

Q. Are you familiar with the handwriting of Mrs. Audrey Henderson Cutting?

A. No, not that I know that it is her handwriting. I have never seen her writing.

Mr. Arend: I would like these marked for identification.

(Thereupon two tally-out sheets were marked by the clerk of the court as Plaintiff's Identifications 13 and 14 and are in words and figures as follows, to wit:)

(Testimony of Stanley D. Baskin.)

Plaintiff's Identification 13:

"Tally-Out (Packing or Loading List)

"War Department. Q.M.C. Form No. 490. (Revised February 8, 1938.)

Serial No. Req. No.

No. of sheets Sheet No.

Ladd—Satellite (Station). [153]

"Warehouse. Engineer. Mile 26. Date 5 June 1945.

"Consignee. Engineer. Ladd Field. Carrier.

"Destination. B/L No.

"Routing. Car No., Initials, Seals No.

"Date Shipped 5 June 1945. Authority P. J. Cutting, Engineer, Satellite.

"U. S. Nos. on Packages	Number and Kind of Packages	Contents	Gross Weight (Pounds)		Cubic Measure
			Unit	Total	
	3 ea.	Spark Oil Heater			
	4 ea.	Spark Oil Heater no name			
	2 ea.	Electric Heaters			
	2 ea.	Electric Ranges			
	6 Boxes	Assorted bolts & nuts			
	4 Rolls	Iron Wire			
		Numerous small rolls of all sizes of wire			
		Several boxes of misc. hardware.			
	1 ea.	Wis. Pump			
	1 ea.	Onan light plant.			
		Excess property.			

.....Packer.

.....Shipper.

"/s/ P. J. CUTTING, Checker.

"Received the above articles in apparent good order and condition (except as noted) this date. . . .

.....(Signature),

.....(Destination)."

(On the reverse side of Plaintiff's Identification No. 13, is the following notation: "A.J.H. 12/26/45 S.D.B.")

(Testimony of Stanley D. Baskin.)

Plaintiff's Identification No. 14:

"Tally-Out (Packing or Loading List)

"War Department. Q.M.C. Form No. 490. (Revised February 8, 1938.)

Serial No. Req. No.

Nof. of Sheets Sheet No.

Ladd—Satellite (Station).

"Warehouse. Engineers. Mile 26. Date 28 May 1945.

"Consignee. Engineers. Carrier.

"Destination, Ladd Field. B/L No.

"Routing. Car No., Initials, Seals No.

"Date shipped. Authority P. J. Cutting, Engineers, Satellite.

"U. S. Nos. on Packages	Number and Kind of Packages	Contents	Gross Weight (Pounds)		Cubic Measure
			Unit	Total	
	8 ea.	Cannons Heaters			
	3 ea.	Inter Oil Stoves			
	4 crates	Stove pipe 6"-8"			
	2 ea.	Refrigerators			
		Assorted pipe fittings			
		Sheet metal.			
		Excess property			

.....Packer.

.....Shipper.

"/s/ P. J. CUTTING, Checker. [155]

"Received the above articles in apparent good order and condition (except as noted) this date.

.....(Signature),

.....(Destination)."

(On the reverse side of Plaintiff's Identification No. 14 is the following notation: "A. J. H. 12/26/45 S. D. B.")

(Testimony of Stanley D. Baskin.)

Q. (By Mr. Arend): I show you Plaintiff's Identifications Nos. 13 and 14 and ask you to examine them. Now I will ask you: have you ever had them in your possession? A. I have.

Q. And from whom did you obtain them?

A. Andrew Jackson Hall, on December 26, 1945.

Q. I call your attention to the signature over the word "checker" of P. J. Cutting on both of these identifications and ask you to state whether or not that is in the handwriting of P. J. Cutting, Percy James Cutting, the defendant?

Mr. Taylor: I object to that, your Honor. This witness, I believe, stated that he didn't know the handwriting of Mr. Cutting.

The Witness: I said that I was familiar with handwriting that Mr. Cutting acknowledged was his own.

The Court: Objection overruled.

A. This appears to be similar to handwriting which Mr. Cutting acknowledged to me was his own handwriting. [156]

Mr. Arend: At this time, your Honor, we offer in evidence Plaintiff's Identifications 2 and 3, the range and the refrigerator; 6 and 7, the plywood boxes; No. 8, the boots; No. 9, the pack sack; No. 10, the leather pants; No. 11, the blankets, and No. 12; No. 11, the quilt blanket and No. 12, the army blanket.

The Court: Have you connected this refrigerator up with the refrigerator described in Count II?

Mr. Arend: Your Honor, we have so far as we are going to be able to.

(Testimony of Stanley D. Baskin.)

The Court: Didn't this witness say there was a refrigeration unit there with the numbers on it, and so forth?

Mr. Arend: He testified there was no regular serial number.

Q. (By Mr. Arend): What numbers did you find on the refrigerator, Mr. Baskin, on December 7, 1945?

A. The model number on the refrigeration unit of the refrigerator is indicated as JX-5, and the style number is 9630150, and the serial number is 4218692; and the indictment shows the model number to be JX-5, the style number to be 9630150, serial number 4218652.

The Court: The same as the number on the refrigerator?

The Witness: The serial number isn't the same. The serial number in the indictment reads 4218652; the serial number on the unit is 4218692.

The Court: In other words, the one you found in Anchorage had a different serial number than the indictment says the refrigeration unit has?

The Witness: That is correct, sir.

The Court: Make your offer again, please. Make them separately.

Mr. Arend: Now, if the Court please, we offer, first, identification No. 6, being a crate in which the testimony has shown there was a range.

Mr. Taylor: We object, your Honor, upon the grounds that the property was seized in violation of this defendant's constitutional rights under the

(Testimony of Stanley D. Baskin.)

Fourth Amendment of the Constitution, in that there was property taken without due process of law; that there was no search warrant issued. The testimony has been that Mr. Fowler gave permission, but I don't believe that Mr. Fowler could waive the defendant's rights in permitting the F.B.I. agents to take the property. And further that it isn't properly connected with the Indictment.

The Court: Objection overruled. It may be admitted.

(Thereupon Plaintiff's Identification 6 was marked, by the clerk of the court, as Plaintiff's Exhibit D.)

Mr. Arend: Next we offer Plaintiff's Identification No. 2, an electric range, in evidence, as one of the government's exhibits in this case.

Mr. Taylor: I make the same objection, your Honor. [158]

The Court: Same ruling. It may be admitted.

(Thereupon Plaintiff's Identification No. 2 was marked, by the clerk of the court, as Plaintiff's Exhibit E.)

Mr. Taylor: Same objection.

Mr. Arend: Then, your Honor, we next offer Plaintiff's Identification No. 12, an army blanket, which the testimony shows was wrapped around this range, Identification No. 2.

(Testimony of Stanley D. Baskin.)

Mr. Taylor: We object to the admission of that upon the same grounds as stated before, your Honor.

The Court: Same ruling. It may be admitted.

(Thereupon Plaintiff's Identification No. 12 was marked, by the clerk of the court, as Plaintiff's Exhibit F.)

Mr. Arend: And we offer next, Plaintiff's Identification No. 7, the crate in which was the refrigerator.

Mr. Taylor: Same objection, your Honor.

The Court: Objection sustained.

Mr. Arend: We make no further offers. You may cross-examine this witness.

Cross-Examination

By Mr. Taylor:

Q. Mr. Baskin, you know Andrew Jackson Hall?

A. Yes, I do.

Q. When did you first meet Mr. Hall?

A. That was August 27, 1945. [159]

Q. And where did you meet him?

A. In the C. and H. Electrical Shop in the Moose Hall, Fairbanks, Alaska.

Q. And who was present?

A. Just Mr. Hall and myself.

Q. And what was the conversation about, Mr. Baskin?

A. I asked him if he had any electric motors.

Q. And what did he say?

(Testimony of Stanley D. Baskin.)

A. I asked him first what his name was. I went there to see Mr. Cutting, and he wasn't there, so I asked Mr. Hall what his name was, and he told me that it was Andrew Jackson Hall, and I asked him where he got some electric motors that were in the shop. He said he bought—he got one of them off of the junk pile at Satellite Field, which had cement in it, which he took out, and repaired the motor; he got another one in exchange from the Elks Club at Fairbanks, and two others from a person who he didn't know who it was.

Q. And what did you do or say then?

A. I asked him if he would permit me to take those to the office and hold them pending further investigation.

Q. And you took those at that time?

A. I did, with his permission.

Q. Did you have any conversation with Mr. Hall at that time regarding this refrigerator and range?

A. Yes, sir. [160]

Q. When did you talk with him about them?

A. Well, I talked with him the first time about November 1st.

Q. Where was that conversation?

A. The next time was about the 20th of November, and then again on the 19th of December.

Q. And in this conversation on November 1st, what was said about the refrigerator? Did you question him about them at the time?

A. Yes. I asked him if he knew anything about a range or refrigerator being brought in from Ladd Field, or Satellite Field, to Moose Hall.

(Testimony of Stanley D. Baskin.)

Q. And what was his answer?

A. He said he didn't know anything about them.

Q. He didn't? A. He did not, yes.

Q. And was that the extent of the conversation at that time?

A. Well, of course, we talked about the range and refrigerator. We talked several minutes about it, but that was the substance. He never admitted he knew anything about it at any time until about December 19, 1945.

Q. December 19, 1945. Did you say you had another conversation with him? Was that the second or third conversation?

A. That was the third conversation. However, the second conversation was about the refrigerator and some other things too.

Q. What did he state, then, about his knowledge of these two items? [161]

A. Well, he again denied having knowledge of them.

Q. And on the third conversation you had with him, what was said?

A. He told me that on or about May 18, 1945, that he was working at Satellite Field under Percy James Cutting, and that on that date he had driven out to Satellite Field in a U-Drive pick-up and Cutting told him to meet a truck about two miles this side, about two miles from Satellite Field on the road to Fairbanks and to remove a refrigerator and a range that were on that truck, put them on his pick-up, and bring them in to the Moose Hall,

(Testimony of Stanley D. Baskin.)

and he said he did that, he and Joe Lymp and Charles Cors.

Q. And when did you first talk to Mr. Cutting about this?

A. I talked to Mr. Cutting on December 6.

Q. Whereabouts?

A. At Anchorage, Alaska.

Q. And you stated that that conference took place in the F.B.I. office at Anchorage?

A. Yes, sir.

Q. In the presence of Mr. Cutting and Mr. Norton?

A. Mr. Hugh C. Norton, Mr. Cutting, and myself.

Q. Now, isn't it a fact, Mr. Baskin, that at the time that you talked with Mr. Cutting you asked him if he had any stolen ranges or refrigerators in his possession?

A. I asked him if he any kind of ranges, any kind of Westinghouse refrigerator or electric range. We didn't limit it to any stolen range. I talked to him for some two hours, and I asked him about any kind of Westinghouse refrigerator or range. It was never limited to a stolen refrigerator or range.

Q. Did you tell him the range and refrigerator had been stolen from Satellite Field?

A. I informed him that my information was that he had directed Joe Lymp and Andrew Hall to take a refrigerator off of a truck that was consigned to Ladd Field and that they did take it off of the truck at about two miles from Satellite Field and

(Testimony of Stanley D. Baskin.)

that it was then put in Percy James Cutting's apartment by him subsequently.

Q. Then, following that, did Mr. Cutting sign any statement at that time?

A. No, he didn't sign any statement.

Q. When did you have your next conversation with him?

A. I never interviewed Mr. Cutting again.

Q. That was all so far as your conversation with Mr. Cutting was concerned?

A. Well, except that when we went over to his home and we again talked. I interviewed him in the presence of his wife. I went over the same questions, or, the same general questions, regarding the refrigerator and the range at his home, but those are the only two times I interviewed Mr. Cutting.

Q. And was it at the first interview or the second interview that you asked him if you could search his place?

A. It was the first one in the F.B.I. office, and he consented. In fact, he asked us to go over there, and he showed me through the house, he and his wife.

Q. Did you ever ask him if you could open these boxes that contained his personal effects?

A. No, I didn't ask him that.

Q. When you went down to Mr. Fowler's, did you have a search warrant to open those boxes.

A. No, I didn't.

(Testimony of Stanley D. Baskin.)

Q. You didn't get a search warrant?

A. No, sir. Mr. Fowler's permission was sufficient.

Q. And Mr. Fowler waived Mr. Cutting's rights?

Mr. Arend: We object to that, your Honor. It is irrelevant to the issues in this case.

The Court: Objection sustained.

Q. (By Mr. Taylor): Now, what time did you go down to Mr. Cutting's home?

A. It was about nine or nine-thirty p.m. on December 6, 1945.

Q. And what did you do when you went in?

A. We were first introduced to his wife.

Q. You hadn't met her before?

A. No, I hadn't. And I told her that Mr. Cutting said we could search his place and asked her if she had any objection, and she said she did not, and thereafter they proceeded—both he and Mrs. Cutting—to show us around their place. We went into every room, down into the basement, and examined it rather carefully.

Q. Now, Mr. Baskin, at the time that you went down there, isn't it a fact that you had already seen these things in Mr. Fowler's cabin?

A. No, sir, it is not.

Q. You didn't know that those were there?

A. I knew, from talking to Hugh C. Norton, that he had seen Mr. Cutting take two boxes down to Mr. Fowler's place, but I had never seen them, but he didn't know that they were there, inasmuch as they could have been moved in the meantime.

(Testimony of Stanley D. Baskin.)

Q. Did you and Mr. Norton go down there together?

A. We did—No, not on November 20, 1945, when Mr. Cutting took them there, I wasn't there.

Q. But Mr. Norton informed you that these two boxes was down at Mr. Fowler's place?

A. That's right.

Q. And regardless of the fact that you knew those were in Mr. Fowler's house, you went down and searched Mr. Cutting's home?

A. I searched Cutting's home, that's right, with his permission.

Q. Knowing that those things were in Mr. Fowler's shed?

A. I knew that those boxes were there. I had no idea, nor did Mr. Norton, as to what the contents of those two boxes were.

Q. You stated that Mr. Norton had seen those boxes?

A. He had seen those two boxes, as shown here by exhibits in this court, as they were nailed up, but that is all he saw. [165]

Q. Hadn't Mr. Hall told you about those boxes?

A. No, sir. Mr. Hall hadn't told me anything about those boxes. He told me that first on December 19, 1945.

Q. Didn't you know that Mr. Hall had crated them up and sent them down?

A. I didn't know that Mr. Hall did, no. I knew that they had been crated and sent down, but I didn't know who did it.

(Testimony of Stanley D. Baskin.)

Q. Now, just where did you go in Mr. Cutting's house, Mr. Hall?

A. As I remember his house, we went in through the back onto a porch, and the next room was a kitchen. There was a General Electric range in there, no refrigerator, and the other room was a large living room, and then we went upstairs into, I think, there was two bedrooms, or at least there are two rooms. Then Mr. Cutting led me down into the basement and showed me the coal pile in the basement.

Q. Did you go in the bedroom of Mrs. Cutting's daughter?

A. I think—yes, I did. That was—I say “into her bedroom”; I went into a bedroom upstairs; they might have told me it was her room. At least I think there was two bedrooms upstairs.

Q. And was the daughter in that room?

A. Well, now, I don't recall that she was in the room. I think she was in the building, though. I think that she was probably there.

Q. Isn't it a fact that you looked in the closets in her bedroom? A. Yes.

Q. The bureau drawers?

A. No, I didn't look in the bureau drawers. I looked in the closet.

Q. Do you know how this girl was dressed at the time you went in her bedroom?

A. Well, I saw her around the house there. She was dressed in ordinary clothes, ladies' clothes.

Q. Isn't it a fact that when you went upstairs, you went up first, Mr. Baskin?

(Testimony of Stanley D. Baskin.)

A. No. Mr. Cutting led me upstairs. I followed him. Mr. Norton was behind me.

Q. Isn't it a fact that Mr. Cutting objected to your making a search of his house when you came down there?

A. He did not. He at no time made or raised any objection.

Q. And that was the last time that you had a conversation with Mr. Cutting, was it?

A. That is the last time I had a conversation with him.

Q. When did you go to the States, Mr. Baskin?

A. I went to the States on April 1, 1946.

Q. You had no further conversation with either Mr. Cutting or Mrs. Cutting?

A. Well, I ran into Mrs. Cutting about February 22 here in Fairbanks and talked with her on the street casually. [167]

Q. Where did that conversation take place?

A. In front of the Nordale Hotel. I just—She happened to be coming out of the Hotel, and I was going by, and I spoke to her, and that is all.

Q. Now, a certain instrument here, marked for identification, was called to your attention. That is supposed to have the signature of Mr. Cutting on it. Have you seen the signature of Mr. Cutting before?

A. I have seen a signature that Mr. Cutting acknowledged to me was his signature.

Q. He acknowledged that this was his signature?

(Testimony of Stanley D. Baskin.)

A. He didn't say that that one there was his signature, no.

Q. But you have seen another signature that resembled this?

A. Yes, sir. He acknowledged that the other signature which I mentioned was his signature.

Q. Did he ever acknowledge that that was his signature, Mr. Baskin?

A. I beg your pardon?

Q. Did he ever acknowledge that that was his signature on those two slips that you identified?

A. No. I never showed them to him. I obtained those December 26, 1945.

Q. Where did you get those?

A. From Andrew Hall.

Q. Mr. Hall was the man who hauled the refrigerator and stove out from Satellite Field? [168]

A. Yes. He said he took them off of the truck pursuant to Mr. Cutting's instructions.

Q. When you went into the basement of Mr. Cutting's home, did you find any of these boxes that had been taken from here down — I don't believe you heard the testimony. The testimony was about twenty boxes of household goods was taken to Anchorage. Did you see any of those boxes around in the basement? A. No, sir.

Q. Just what was in the basement?

A. The only thing that was down there was a coal pile. There might have been something else, some tools or equipment, but there were no other boxes down there—I don't know—just——

(Testimony of Stanley D. Baskin.)

Q. Did you look around for the boxes?

A. Yes, sir, I did.

Q. And was there a furnace in the basement?

A. Yes, I think so.

Q. Did you pay any particular attention to what it was, hot air heat or steam heat?

A. No. Just a coal furnace was the only thing I noticed.

Q. And about how much coal was in there?

A. Oh, I would say there was about half a ton; maybe five hundred to one thousand pounds.

Q. Was there a coal chute there where that would be put in the basement? Did you notice that?

A. I didn't notice one, but I assume there was one, because it was piled up next to the wall, and it would be rather inconvenient to have it brought in through the back porch and into the basement.

Q. I believe you came back here in February as a witness before the grand jury?

A. I was a witness before the grand jury. I was here then.

Q. I believe you testified awhile ago that Mr. Hall had made a written statement to you regarding his implication, or, in the form of a confession of his activities in regard to the range and refrigerator?

A. He gave me a written statement as to what he knew about the whole thing.

Q. Mr. Baskin, I believe you might just tell me, when you are interviewing anybody in your office, do you customarily take notes of what is said?

A. Yes, I do.

(Testimony of Stanley D. Baskin.)

Q. And what do you do with those notes?

A. I retain those. I put them in the file of the Federal Bureau of Investigation.

Q. And I believe you stated that you interviewed Mr. Cutting for two hours the first time?

A. Approximately two hours, yes, sir.

Q. Now, Mr. Baskin, you were asked to state the subject of this conversation. In a period of about three minutes you gave the context of a two-hour conversation. Now, have you the notes that you made at that time?

A. Yes, sir. [170]

Q. Have you them with you? A. Yes, sir.

Q. And could you produce them if called upon?

A. I could.

Q. The whole set of notes? Mr. Cutting signed those when he got through?

A. No, he did not.

Q. Those are merely—you merely jot down those notes?

A. As we went along, I could jot down enough of it to know what he said so that I could report it and remember it.

Q. Is that more or less in the nature of a short, disjointed statement which you fill out later?

A. That is right. Just phrases and words so that I know what he said.

Q. When you type it up, you elaborate on them, but just enough so that you can carry them out?

A. That is right. I put down enough so that I can—enough of what he said so that I could put down, when I wrote them up, what he said.

(Testimony of Stanley D. Baskin.)

Q. And the material parts of this two-hour conversation is what you stated a little while ago, Mr. Baskin? A. I beg your pardon?

Q. The material part of this two-hour conversation is what you testified to a few minutes ago?

A. That's right.

Q. Only the parts dealing with the range and refrigerator?

A. Oh, no. I also asked him about the linoleum that was in his apartment, and the celotex, and the plyboard, and the other fixtures that went into it.

Q. Could I take a look at your notes, Mr. Baskin?

A. I have no objection.

Mr. Arend: If the Court please, if he wants to introduce them in evidence, we have no objection, but for this purpose, in this instance, at any rate, the testimony of the witness seems to me to be the best evidence.

The Court: The objection will be sustained.

Mr. McCutcheon: You mean, your Honor, we are put under the condition that we must introduce them if we ask for them?

The Court: This witness didn't testify from notes; he testified from memory.

Mr. McCutcheon: Your Honor, doesn't the Compiled Laws of Alaska give us the right to view such papers?

The Court: Only where the witness has testified from his notes.

Mr. McCutcheon: Very well, sir.

(Testimony of Stanley D. Baskin.)

(A ten minute recess was declared, after which court was duly reconvened. All members of the jury were present.) [172]

The Court: Counsel ready to proceed?

Mr. Taylor: Yes, your Honor.

Q. (By Mr. Taylor): Mr. Baskin, you state that you didn't see any of the other boxes which had been shipped down from Fairbanks when you went to Mr. Cutting's house; is that right?

A. That is right. There were no boxes in the basement or in the house. I had never seen any boxes in Fairbanks.

Q. Well, isn't it a fact that when you went onto the back porch there was a number of boxes there and that you asked Mr. Cutting what was in the boxes?

A. No, that isn't a fact.

Q. You didn't see any boxes on the back porch?

A. You mean under the back porch or on the back porch?

Q. On the back porch.

A. There was a tool chest out there that we looked at.

Q. That was the only box on the back porch?

A. The only box of any size, yes.

Mr. Taylor: That is all.

Redirect Examination

By Mr. Arend:

Q. Did you take anything away from the Cutting house in Anchorage as a result of your search?

A. I did not.

Mr. Arend: That is all.

(Witness excused.)

ALVA A. GOULD

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Alva A. Gould.

Q. Where are you employed, Mr. Gould?

A. N. C. shipping department.

Q. How long have you worked there?

A. '43, '44, '45, '46.

Q. Do you know Leo Hardy? A. Yes, sir.

Q. Do you know Mrs. Percy James Cutting?

A. I have met the lady, yes.

Q. Calling your attention to the 7th day of November, 1945, were you with Mr. Hardy on that day? A. Yes, sir.

Q. Were you with Mr. Hardy on Second and Wickersham at a building just this side of what is known as Gene's garage? A. Yes, sir.

Q. And what were you doing there?

A. Loading some personal property that the lady owned.

Q. What did you load there?

A. At that one spot?

Q. Yes.

A. If I remember correctly, we loaded two boxes out there.

Q. Can you state as to the weight of those boxes?

(Testimony of Alva A. Gould)

A. Well, I couldn't definitely state the weight, but it is all two men could do to put it up on the truck. [174]

Q. Both boxes?

A. Each one, yes. One wasn't as heavy. One wasn't so heavy. In fact, most of her stuff was heavy.

Q. Did you see her there at all?

A. Yes, she was there with us.

Q. Do you know what the heavy boxes contained?

A. No, not definitely. Not outside of I asked her if I could roll it, and she said "No," there was a stove in it.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

Mr. Arend: That is all, Mr. Gould.

(Witness excused.)

ROGER VERNON GULL

called as a witness on behalf of the plaintiff, having been duly sworn, by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you state your full name, please?

A. Roger Vernon Gull.

Q. Where do you reside, Mr. Gull?

A. Fairbanks.

Q. What is your occupation?

A. Plumbing appliance shop.

(Testimony of Roger Vernon Gull)

Q. Do you have any business connections with the Westinghouse Electric and Manufacturing Company?

A. I am their representative in Fairbanks.

Q. Do you handle their ranges and refrigerators?

A. When I get them.

Q. How long have you represented them?

A. Since November, 1944.

Q. How long have you familiarized yourself with Westinghouse Electric ranges and refrigerators?

A. Since 1938.

Q. Will you step down here? I call your attention to government's Exhibit E. purporting to be a Westinghouse electric range. Will you examine that? And then will you please examine Government's Identification No. 7? All right, you may take the stand again. [176]

(The witness resumed the witness stand.)

Q. Having examined Government's Exhibit E, the range, what, in your opinion, is the market value of that range?

A. Well, it is a 1939 model. At that time it retailed in Fairbanks for \$100.00 to \$110.00.

Q. What would its market value be today?

A. That would depend entirely on the condition of the range.

Q. Well, have you examined it sufficiently so that you can state?

A. If it is in working condition. It would have a valuation of anywhere from \$45.00 to \$75.00 or-

(Testimony of Roger Vernon Gull)

dinarily. If it is not a new range and after it has been in use for six months, you discount thirty-three and one-half per cent, and each year afterwards you deduct a certain percentage.

Q. What, in your opinion, is the value of that refrigerator today?

A. Well, I purchased the General Electric refrigerator, same condition, same size, for \$75.00 from Anne Schiek

Q. How long ago?

A. About three months ago.

Q. Have you identified these two items as Westinghouse equipment?

A. Yes. They both wear the brand name.

Mr. Arend: You may cross-examine. [177]

Cross-Examination

By Mr. Taylor:

Q. Did you ever talk to Mr. Arend about these two exhibits before, Mr. Gull? A. No.

Q. What? A. No, I haven't.

Q. How do you happen to be up here today?

A. I was notified to come.

Q. Who by? A. By the court.

Q. You never had any conversation with Mr. Arend at all? A. No, I haven't.

Q. This is the first conversation you had with him?

A. In the hall for about a minute when they called me.

(Testimony of Roger Vernon Gull)

Q. Now, Mr. Gull, calling your attention to this refrigerator there, are the refrigeration units in there interchangeable in refrigerators of that type?

A. Yes, they are.

Q. And that refrigeration unit can be pulled out and another refrigeration unit put in?

A. Yes.

Q. Is there any serial number on the refrigerator itself, on the box?

A. There should be one on the back of the box.

Q. But in the event a refrigeration unit, which is the actual mechanical part of the refrigerator, for any reason wouldn't work, you could install another unit in there? A. Yes.

Q. Could you say that this box is the box with the original refrigeration unit in it?

A. That would be impossible to say.

Mr. Taylor: That is all, Mr. Gull.

Redirect Examination

By Mr. Arend:

Q. Mr. Gull, what would be the value of the refrigerator without the refrigeration unit in it?

A. About \$15.00.

Q. About \$15.00?

A. You couldn't even use it for an ice box.

Mr. Arend: Your Honor, at this time we make an offer again of Government's Identification No. 3, the refrigerator without the refrigeration unit.

Mr. Taylor: If the Court please, we are going to object to that upon the ground that there is no

(Testimony of Roger Vernon Gull)
identification of the box. The Indictment says that Mr. Cutting took and carried away a refrigerator. The Government's own witness testifies that the freezing unit is interchangeable and it is impossible to tell whether that is the original box it came in or not.

The Court: The objection will be sustained.

(Witness excused.) [179]

HUGH C. NORTON

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please, Mr. Norton.

A. Hugh C. Norton.

Q. Where do you reside?

A. Philadelphia, Pennsylvania.

Q. What is your occupation?

A. I am a special agent of the F.B.I.

Q. How long have you been with the Federal Bureau of Investigation?

A. A few months over seven years.

Q. Were you ever stationed in Alaska?

A. Yes, sir.

Q. Where?

A. First in Juneau and next in Anchorage.

Q. Were you in Anchorage during the winter of 1945 and 1946?

A. Yes, sir.

(Testimony of Hugh C. Norton.)

Q. Are you acquainted with the defendant Percy James Cutting sitting here? A. Yes, sir.

Q. Do you know his wife, Audrey Henderson Cutting? A. Yes, sir.

Q. I would like to have you step down here and examine Government's Exhibit E, an electric range, and Government's Exhibit D, this plyboard box.

A. Yes, sir.

Q. Will you also examine Government's Identification 3, this refrigerator, and Government's Identification No. 7? A. Yes, sir.

Q. While you are here, will you also examine Government's Identification No. 8, being a pair of boots? A. Yes, sir.

Q. And Government's Identification No. 9, a pack sack? A. Yes, sir.

Q. And Government's Identification No. 10, leather pants, and Government's Identification No. 11, which is a quilt? A. Yes, sir.

Q. Finally, this Government's Identification No. 12, being a woolen army blanket? A. Yes, sir.

Q. Now, you may take the witness stand.

(The witness returned to the witness stand.)

Q. Have you seen before these items that you have just examined? A. Yes, sir.

Q. When and where?

A. At Anchorage, Alaska. The two crates first on—these are notes that I made at the time that I examined the items—on November 20, 1945, and the other materials, the other items, I have examined on December 7, 1945.

(Testimony of Hugh C. Norton.)

Q. And where did you see the boxes on November 20, 1945?

A. In the warehouse of the Northern Commercial Company in Anchorage.

Q. How did you happen to see them there?

A. Well, in the afternoon of November 20, 1945, I had receipt of information that these boxes, crates, containing government owned equipment were in the N. C. warehouse, so I went over to see Mr. Peterson, the manager of the warehouse, and this time I saw these two crates, along with nineteen other crates and boxes, on the bed of a large truck inside of the warehouse. At that time I marked them so that I would know them at any future time I might see them; and I requested that the storekeeper of the warehouse notify me as soon as anyone came to pick them up. He told me—Mr. Peterson, the manager, told me that a Mrs. Audrey Cutting had been in the warehouse just a short time before that and told him, Mr. Peterson——

Mr. McCutcheon (Interposing): We object to that as hearsay, your Honor. [182]

The Court: Objection sustained.

Q. (By Mr. Arend): Just tell what you know of your own knowledge, or what was told you in the presence of the witness. Otherwise just tell what you did.

A. And I told Mr. Adams to let me know as soon as anyone came and I went back to our office in the Federal Building in Anchorage to await his call.

Q. Did you receive a call?

A. Yes, sir, at three-forty-five in the afternoon.

(Testimony of Hugh C. Norton.)

Q. And what did you do after you received this call?

A. I immediately got in a government car and drove over to the N. C. warehouse, where I parked the car across the street from the warehouse and went inside.

Q. And what did you observe there?

A. I saw two men and one woman on the bed on the truck. The two men were on the bed of the truck and the one woman was on the running board of the truck holding the boxes, and they had a small red pick-up truck backed up to the rear of the truck and pushed these two crates on the small truck. I stayed there for probably five minutes, so that I would be certain I would recognize both the men and the woman again if I saw them again. Then I went outside, across the street, and got into my truck, or, rather my automobile, and waited until they drove their small pick-up truck out of the warehouse. While I was in there, I took the license number of the small red pick-up truck and noted its general description, so that I would know for certain that was the truck that came out of the warehouse. Those were the only two automobiles in the building, so there was no doubt about which came out; and I waited probably fifteen minutes, and a large door of the garage opened and this same truck came out with the three people in it, and they drove—the N. C. warehouse is located and I was parked on Fifth Avenue between Ninth and H Streets. The red pick-up truck drove out with the two crates

(Testimony of Hugh C. Norton.)

in it, and they went out to a small out-building at the rear of 214 Fifth Avenue in Anchorage, where the two men unloaded these two large crates, put them in the small building, and the woman who was with them went into the house at 214 Fifth Avenue. It took them approximately twenty minutes to unload the two large cases, and the one individual, one man, Mr. Cutting, drove the small red pick-up truck to the Pacific Airmotive hangar at Marrow Field at Anchorage at four-thirty-five p.m. There I discontinued my surveillance and went back to my office.

Q. Can you now state who these two men were who unloaded these boxes? A. Yes, sir.

Q. Who were they?

A. Mr. Cutting and Mr. Howard Fowler.

Q. By "Mr. Cutting," do you mean the defendant? A. I do.

Q. Do you know who the lady was?

A. Yes. Mrs. Audrey Cutting.

Q. Did you, at any later time, see these crates in Anchorage?

A. Yes; on numerous occasions, after November 20, 1945, I went back and drove by this small building. Incidentally, when they were unloading the two cases, I got out of my car and stood within a few feet of them, and I could recognize the same individuals at that time. It was a little dark, and I could stand closely and could see that Mr. Fowler and Mr. Cutting were unloading them. I went back several times to make sure the boxes were still there and hadn't been tampered with and were the same boxes.

(Testimony of Hugh C. Norton.)

Q. Did you ever examine the contents of the boxes? A. Yes, sir.

Q. When did you do that?

A. On December 7, 1945.

Q. And what did you discover as a result of your examination?

A. I found that the boxes contained one Westinghouse electric range, type TH64, serial number 830175, frame style number 1086298, which is that range; and the other box contained one Westinghouse refrigeration, model JX-5, style number 9630150, serial number 4218692, which is that refrigerator, and in addition the other items that I have examined here: the blankets, pack sack, flier's boots, and officer's trousers. [185]

Q. Did you find any blankets in the boxes?

A. Yes, sir. The blanket that the defendant is sitting on and the large comforter on top of the range.

Q. Did you obtain the permission of anyone to examine the contents of those boxes?

A. Yes, sir. Mr. Howard Fowler and his wife.

Q. Mr. Norton, have you made any investigation to determine the ownership of the range and refrigerator just mentioned? A. Yes, sir.

Q. What have you found in that respect?

A. Well, this is one thing that I have done. On December 7, after I examined this range and this refrigerator, I sent a radiogram to our Boston office to interview the officers at the Westinghouse Company at Springfield, Massachusetts, to find out if

(Testimony of Hugh C. Norton.)

they could determine who they sold which items to, and I also sent a radiogram to our Cleveland office to contact the Westinghouse officers at Mansfield, there to find out the same thing, and on December 12 Cleveland advised me——

Mr. Taylor (Interposing): Just a moment. We object to what Cleveland advised him. I think the correspondence, the telegrams, are the best evidence, your Honor.

The Court: Objection sustained.

Q. Do you have the telegraphic communications or whatever communication you received with you from those places? A. No, sir. [186]

Q. All right, let's skip that then.

The Court: Just a moment, I would like to get this straight. Will you read off the data you have there identifying the refrigerator?

The Witness: Model JX-5, style number 9630150, serial number 4218692.

The Court: It is the same as Mr. Baskin had.

Q. (By Mr. Arend): Mr. Norton, did you interview Mr. Cutting on December 19, 1945, relative to a Westinghouse electric range and refrigerator?

A. Yes, sir.

Q. Where was that?

A. That was in our office in Anchorage in the Federal Building.

Q. Who was present?

A. Mr. Charles E. Wright, who is also a special agent of the F.B.I., Mr. Cutting, and myself.

(Testimony of Hugh C. Norton.)

Q. What did you do by way of interview?

A. Well, I talked with Mr. Cutting for some time in an endeavor to get the true story concerning the refrigerator and the range and the other items.

Q. Did he make any admissions regarding the range and refrigerator at that time?

A. Yes, sir.

Q. Did you advise him of his constitutional rights at that time?

A. I told him he did not have to make any statement to me; that any he might make could be used against him in the courts of law. [187]

Q. Did you use any force, threats, coercion, or inducements to get him to make these statements?

A. No, sir.

Q. Did he make a statement? A. Yes, sir.

Q. Did he read it before signing it?

A. Yes, sir.

Q. Do you have that statement with you?

A. Yes, sir.

Q. Will you read it to the jury, please?

A. It is dated December——

Mr. Taylor (Interposing): Just a moment, we want to object to this until it is identified and offered in evidence here. We don't want that to go in here until we have a chance to observe, to see what it is.

The Court: You are offering it in evidence, of course.

Mr. Arend: Yes, we offer it in evidence.

The Court: Well, submit it to counsel first.

(Testimony of Hugh C. Norton.)

Mr. Taylor: No objections, your Honor.

The Court: Very well. It may be admitted.

(Statement by Percy James Cutting, dated December 19, 1945, was marked by the clerk of the court as Plaintiff's Exhibit G and is in words and figures as read by the witness Norton.)

Q. (By Mr. Arend): Will you please read Plaintiff's Exhibit G to the jury?

A. Yes, sir. It is dated "December 19, 1945, Anchorage, Alaska.

"I, Percy James Cutting, 733, 5th Street, Anchorage, Alaska, make the following free and voluntary statement to Hugh C. Norton, who is known to me as a Special Agent of the Federal Bureau of Investigation. I know that I do not have to make a statement and that anything I say may be used against me in a court of law. I also wish to state that nothing has been offered or given to me for making this statement and that I make it of my own free will. I am forty-three years of age and I was born at Castletown, Vermont. I first went to Fairbanks, Alaska, approximately April 1, 1944, where I immediately began working for the U. S. Army Engineers, having previously worked for the Army at Nome, Alaska. I worked continuously for the U. S. Engineers at Fairbanks, Alaska, until November, 1945, when I was transferred to Ft. Richardson, Anchorage, Alaska. While I was in Fairbanks my wife, Mrs. Audrey I. Cutting, operated

(Testimony of Hugh C. Norton.)

the Mount McKinley Ice Cream Company there. About August 30 or 31, 1945, I was in my wife's place of business and a man came in whom I had seen there before but whom I did not know. He asked both my wife and me if we knew anyone who was interested in buying some household furniture. I asked him what he had and he replied that he had chairs, tables, beds, set of dishes, a refrigerator, electric stove, washing machine, a waffle iron and several other items of furniture, including a dining room set. I told him that inasmuch as we already had most of our furniture we would be interested in only the refrigerator, stove, washing machine, waffle iron and the set of dishes. I asked him what he was asking for the items but he did not set a price, saying that he was going to haul a truckload of goods to Anchorage, Alaska, in the near future and that he would bring the items around in a couple of days and we could then take a look at them. Further, that he had these specific items on the truck which was already loaded. My wife and I told him all right and we did not see him again until September 1, 1945, when he came into my wife's place of business about 5:00 p.m. I was there at the time and he told us that he had the furniture outside on the truck and that we could take a look at it. We both went out, my wife and I, and saw that he had numerous boxes on the platform of the truck, with the refrigerator, stove, and washing machine set out where we could examine them. In addition he had a box full of miscellaneous items, mostly kitchen equipment, which included a waffle

(Testimony of Hugh C. Norton.)

iron and a set of Mexican design dishes. After looking these items over I asked him how much he wanted for the refrigerator, stove, washing machine, waffle iron and dishes and he said \$350.00. I offered him \$300.00 and he finally decided to accept. After that he helped me put the refrigerator and washing machine in the first floor hall of the building in which my apartment was located and the electric stove in a small room in the rear of the Veteran's Building in which I had previously stored other of my personal property. My wife took the waffle iron and the set of dishes up to the apartment. The dishes consisted of four each of salad plates, cups, and saucers in addition to one tea-pot. I wish to state at this time that when the transaction occurred Mrs. Cutting and I had not as yet been married and that the apartment was actually her property. I lived in the Veteran's Building. After we had finished storing the equipment we had purchased we all went into the Mt. McKinley Ice Cream Company where we paid the truck driver \$300.00 in cash. We offered to give him a check but he said he was leaving for Anchorage right away and that he would rather have the cash. However, at that time my wife typed out a Bill of Sale covering one Westinghouse Electric Range, one Montgomery Ward Washing machine, one Westinghouse Refrigerator, one Waffle Iron and One Set of Mexican Pottery Dishes" (signed at end of page one) "Percy J. Cutting"

"—2—

"December 19, 1945

"Anchorage, Alaska

(Testimony of Hugh C. Norton.)

“which covered everything we purchased from him. This Bill of Sale is dated September 1, 1945 and sets out in part as follows: ‘M. W. O’Neil assigns all interest of said goods and further claims that household goods are clear of any indebtedness.’ The Bill of Sale is signed by M. W. O’Neil, Bellingham, Washington, c/o General Delivery and is witnesssd by Audrey Henderson who now is Mrs. P. J. Cutting. After signing the Bill of Sale Mr. O’Neil left and although I did not see him again my wife told me that she had seen him in Fairbanks on the following morning at which time she asked him if he was going to Anchorage. He told her that he was going to Anchorage that morning but did not say whether or not he would be back. In regard to the cash we paid O’Neil I gave him \$175.00 and my wife gave him the remaining \$125.00. I haven’t seen O’Neil since that time and do not know whether he is still in Alaska but he did tell me during the course of the conversation at the time of the sale that he intended to remain in the Territory. A week or so later my wife tried to use the washing machine but discovered that the tub was cracked and leaked and after making unsuccessful attempts to repair it by welding, etc., I threw it in the Fairbanks City Dump. It was a second-hand machine and was beyond repair due to the pot metal used in the construction of the tub. The refrigerator and stove remained where we had placed them until about the latter part of October, 1945, when I crated the re-

(Testimony of Hugh C. Norton.)

frigerator and range with the assistance of Andrew Hall, who merely nailed the crates up after I had constructed them. About November 1, 1945, I left Fairbanks, Alaska, and came to Anchorage where I now reside. My wife packed the household equipment that was in the apartment, with the exception of the above-mentioned set of dishes and waffle iron which I placed inside of the refrigerator, and hired the Northern Commercial Company of Fairbanks to transport it to Anchorage. As I recall, it arrived in Anchorage, Alaska about the middle of November, 1945. The equipment remained in the N. C. Company's warehouse in Anchorage until November 20, 1945. Just prior to this I made arrangements to rent an apartment at Ft. Richardson and inasmuch as this apartment was equipped with a stove and refrigerator I contacted Howard Fowler, 214 5th Avenue, Anchorage, and made arrangements with him to store two crates in a small outbuilding he owns which is located immediately to the rear of his house. On November 20, 1945, my wife and I, with the assistance of Mr. Fowler, hauled the refrigerator and stove from the N. C. Company's warehouse to this small outbuilding where I stored them and where, to my knowledge, they still remain. Mr. Fowler did not know what the boxes contained and did not ask after I told him they were household furnishings. I wish to state that everything in the above statement which consists of this and one other

(Testimony of Hugh C. Norton.)

page is true and correct. I have signed each page and initialed all corrections.”

/s/ “PERCY JAMES CUTTING”

“Witness:”

/s/ “CHARLES E. WRIGHT,
Special Agent, F.B.I.”

/s/ “HUGH C. NORTON,
Special Agent, F.B.I.”

Q. (By Mr. Arend): Does everything Mr. Cutting said to you at that interview appear in the statement? A. No, sir.

Q. Do you recall what else was said? Yes or no.

A. Yes. Mr. Cutting and Mrs. Audrey Cutting, who was also present during the first part of the interview, said when I talked to them the first time on December 6, 1945, they said they were sorry that they had lied, told me the big lie that they told me on that day, and that this story was the truth; they said that they thought they could get away with the first lie until they found out that we knew too much about it, so they came in and gave us another story.

Q. This last story is the truth according to their stories? A. Well, that is what he said.

Q. That is what he said? A. Yes.

Q. Have you ever located M. W. O’Neil at Everett, Washington?

A. No, sir. We have tried, but we haven’t been able to find any M. W. O’Neil. By looking through the city directory, the telephone directory, gas bills, electric light bills, post office, we can’t seem to locate anybody by that name.

(Testimony of Hugh C. Norton.)

Q. Do you know what disposition was made of the range and refrigerator?

A. At that time, of course, it remained in the building owned by Mr. Fowler, and on December 19, 1945, when I interviewed Mr. Cutting the second time and took this signed statement I have just read, I asked him if it would be all right if I kept it until it was actually proven who did own it, and he said yes; so I then went to Mr. Fowler and asked him if it was all right if I kept them, and he said yes; so I had them moved, or rather, I moved them to the warehouse of the Northern Transfer Company at Anchorage, where I turned them over to Mr. Stanley Baskin. Another thing I forgot to mention in your previous question: the reason given by Mr. Cutting and his wife when they told me they had told me a big lie the first time they talked to me was Mr. Cutting said, after he started working at Fort Richardson airbase in Anchorage, some army intelligence officers came up to him and asked him if he knew anything about a stolen refrigerator and washing machine, and he said that he did not; and he said, because of the fact that he had bought it from O'Neil, he figured that it was stolen, inasmuch as he couldn't find any serial numbers on it; so when I asked him about it—Mr. Wright and I both asked him about it—he thought he had better cover it up, because he thought it might be stolen. However, the serial numbers are on both pieces.

Mr. Arend: You may cross-examine. [195]

(Testimony of Hugh C. Norton.)

Cross-Examination

By Mr. Taylor:

Q. Mr. Norton—Norton, is that, or Naughton?

A. Norton.

Q. Norton? A. Yes, sir.

Q. You said you had the first conversation with Mr. Cutting on the 20th day of November, 1945?

A. No. No, I didn't talk to him that day at all. I just observed him. I first talked to him—I first talked to him on December 6, 1945.

Q. December 6? A. Yes, sir.

Q. Now, you made a statement that you had received word that stolen government property had been transported to Anchorage. Where did you receive that word from, Mr. Norton?

A. On November 19, 1945, Mr. Stanley Baskin telephoned me from Fairbanks and told me that he had information that a Westinghouse range and refrigerator had been transported to Anchorage by truck and that they were now in the Northern Commercial Company warehouse; they were sent down some time about the first part of November, he told me.

Q. Why did you use the word "stolen"? Does that word "stolen" appear in that message from Mr. Baskin?

A. No. These are merely notes I made when I took the phone call.

Q. That is merely an assumption that they were stolen? A. Well, I don't know.

(Testimony of Hugh C. Norton.)

Q. Or is that remark made to prejudice the defendant here before the jury?

A. No, certainly not. I don't know what Mr. Baskin thought; I just took the message.

Q. You used the words that stolen property had been sent to Anchorage?

A. Well, they are stolen.

Q. You had received word—Did this word there that you received from Mr. Baskin say anything about stolen property?

A. I can't recall now, whether he said it or not, but I will say, if you like, that he may not have; he very possibly didn't—merely property belonging to the government that somebody else had in his possession.

Q. Did Mr. Baskin say that it belonged to the government? Did Mr. Baskin say that it was government property?

A. No. I think he told me he was quite sure it was government property and for me to conduct an investigation and try to find out.

Q. And after you seen this stuff unloaded at the N. C. Company and taken out, you talked to Mr. and Mrs. Cutting; is that right?

A. Sometime after, yes, sir.

Q. Now you stated in your conversation with Mr. and Mrs. Cutting the second time they were sorry they told you the big lie about having this stuff. Who used the words "the big lie," "they told you a big lie?"

A. They did.

Q. Who said they told a big lie?

(Testimony of Hugh C. Norton.)

A. They both did: Mr. and Mrs. Cutting.

Q. Now, in your first conversation, did they deny that they had any stolen government property?

A. Yes, they denied everything.

Q. And in the next conversation you had with them they told about the property that was not stolen that was bought from Mr. O'Neil; is that right?

A. They told me the property was not stolen. They told me about the property that they said was not stolen.

Q. In the second one? A. Yes.

Q. That is the statement that has been introduced in evidence here, Mr. Cutting's statement?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, you say that you made a search for M. W. O'Neil. Where did you make the search?

A. No, sir. I didn't make the search.

Q. Who did? A. Other special agents.

Q. Whereabouts?

A. Out of our Seattle office at Bellingham, Washington, I think; it was the address given by Mr. O'Neil on the alleged bill of sale.

Q. On the bill of sale. Did you, as an agent of the Federal Bureau of Investigation, make any search for an M. W. O'Neil at Fairbanks?

A. No, sir.

Q. Did you make one at Anchorage?

A. Yes, sir.

(Testimony of Hugh C. Norton.)

Q. Did you find out anything if there was an M. W. O'Neil? A. No, sir.

Q. And you made no search at Fairbanks?

A. No. I wasn't here.

Q. Where did you search in Anchorage?

A. Well, I went to the chief of police, and then we examined the water bills, the gas bills, water bills in the City of Anchorage, tax records, telephone directory, and inquired of the numerous old residents in scattered parts of the town.

Q. And that would be after—Did you search the records—that would be after Mr. O'Neil sold this stuff to Mr. Cutting and went to Anchorage?

A. Will you say that again, please?

Q. Did you examine the records of the City there, the water [199] bills and the other matters you spoke of, after the time that Mr. Cutting said he bought the things from O'Neil?

A. Yes, sir.

Q. But you made no search at Fairbanks, then, for an M. W. O'Neil?

A. I requested Mr. Baskin to make a search. I wasn't here.

Q. Do you know whether or not Mr. Baskin made a search around Fairbanks as to anybody by that name? A. Yes.

Q. Did he make a search? A. Yes.

Q. Did you check on any of the transportation companies, either steam or aerial, that went Outside about that time? A. Yes, sir.

(Testimony of Hugh C. Norton.)

Q. Or any trucks that went over the Highway to the States? A. Any trucks?

Q. Yes, that went over the Alcan Highway.

A. No, sir, I did not do that.

Q. Now, Mr. Cutting's statement there said that this man was leaving in a truck, but you made no search to find out whether an M. W. O'Neil had gone Outside?

A. I think you are in error. Mr. Cutting was told by the man he thought he would stay in the Territory.

Q. He just thought he would stay here?

A. Yes, sir. [200]

Q. Now, that bill of sale, I believe, in the statement says that this man's future address was to be Bellingham, Washington? A. Yes.

Q. General Delivery; is that not right?

A. General Delivery.

Q. And you didn't make any search at Bellingham personally? A. I personally did not.

Q. And do you know whether or not any other agents of the Federal Bureau of Investigation made a search at Bellingham, Washington?

A. Yes, sir.

Q. How do you know?

A. By reports sent to our office in Anchorage from our Seattle office.

Q. Have you got those reports now, Mr. Norton?

A. No, sir, I do not.

(Testimony of Hugh C. Norton.)

Q. Are they in the office here of the F.B.I.?

A. No, they are in the Anchorage office?

Q. They are in Anchorage. So what you know is only more or less hearsay from the officers in Bellingham that they had made a search, but you don't know the extent of that search; is that right?

A. I know they made a search, and they set out in their report what they did; and it is hearsay, I will grant you that.

Q. Did you make any investigation at Fairbanks as to whether or [201] not a man by the name of M. W. O'Neil had resided in or about Fairbanks, Alaska?

A. I personally did not.

Q. For the year or so prior to the date that Mr. Cutting bought these things——

A. No.

Q. From him?

A. No, I did not.

Q. And you don't know whether Mr. Baskin did or not?

A. He told me he did.

Q. Now, coming back to the refrigerator, Mr. Norton, would you just read those numbers off on that that you have on the refrigerator?

A. Yes.

Q. Now, just before you read them, I want to ask you one question. Where is that number on the refrigerator? Is that on the refrigerator proper, or is it on the refrigeration unit?

A. It is on what I would consider to be the refrigeration unit.

Q. All right. Would you read that number off again?

A. Model JX-5, style number 9630150, serial number 4218692.

(Testimony of Hugh C. Norton.)

Q. Just read that serial number. I want to jot it down here. A. 4218692.

Q. Now, are you acquainted with the construction of refrigerators such as that, Mr. Norton?

A. Not a great deal, no. I have examined them.

Q. Do you know whether or not that refrigeration unit is an interchangeable part in there that can be put in any box of that size and type?

A. No, I can't say whether it could or not.

Q. And you don't know whether that refrigerator is the original refrigerator—that is, the box—is the one in which the refrigeration unit came in except that you knew that it was in there at the time you took a look at it? A. That's right.

Q. Now, after your second conversation with Mr. and Mrs. Cutting, did you ever go to the Cutting home in Anchorage?

A. At the time of the—At any time after the first conversation?

Q. Yes. I will just reframe that question. Did you ever go to the Cutting home?

A. Yes, sir.

Q. When? A. On December 6, 1945.

Q. What time of day was it?

A. It was—I don't have it noted, but it was after dinner, I would say, about seven-thirty, eight perhaps.

Q. How did you go in?

A. Well, Mr. Cutting was with us. We went in with him.

(Testimony of Hugh C. Norton.)

Mr. Arend: Your Honor, we object to further questions of this witness as to what happened at the Cutting home on December 6, 1945. Mr. Baskin has gone into this already. It [203] would take up needless time of the court and jury, and besides this witness did not testify on direct examination as to any visit to the Cutting home on December 6, 1945.

The Court: You object on the ground that it is not cross-examination?

Mr. Arend: It is not proper cross-examination, your Honor.

The Court: Objection sustained.

Q. (By Mr. Taylor): Mr. Norton, did you ever go down to the City dump to see if you could find the washing machine that Mr. Cutting had purchased from Mr. O'Neil?

A. The City dump in Fairbanks?

Q. Yes.

A. No, I was not in Fairbanks.

Q. Do you know whether Mr. Baskin did?

A. No, I don't know. I hardly think he did.

Q. And did you see the dishes, and the waffle iron, and the toaster that Mr. O'Neil sold to Mr. and Mrs. Cutting?

A. Well, you say Mr. O'Neil sold them. I don't think he did. I saw——

Q. (Interposing): As stated in Mr. Cutting's typewritten statement.

A. Yes, I did.

Q. You saw a waffle iron?

A. Yes, sir. [204]

Q. And a toaster?

A. Yes, sir.

(Testimony of Hugh C. Norton.)

Q. And I believe you found them in the refrigerator, were they not? A. Yes, sir.

Q. Did you see any dishes, any dishes in there?

A. Yes. There were some glasses in there, and I can't recall whether there were any Mexican dishes or not. I don't have them listed, and it was over a year ago. I don't remember, I am sure.

Q. Your memory would be a little hazy in that length of time?

A. In that regard, well, yes. Dishes certainly wouldn't be government property, and I wouldn't be concerned with them.

Q. Mr. Norton, do you know whether or not the serial number that you have read off there is the same serial number as shown in the Indictment in this case?

A. I don't know about that. This is the same as on the refrigerator. I have not seen the Indictment.

Mr. Taylor: That is all, Mr. Norton.

Mr. Arend: That is all.

(Witness excused.) [205]

JOHN J. BUCKLEY

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. John J. Buckley.

(Testimony of John J. Buckley.)

Q. You are the chief deputy marshal for the Fourth Division of Alaska, are you not?

A. Yes, sir.

Q. Mr. Buckley, are you acquainted with Joseph Lymp?

A. I don't know the man, no. I know who he is.

Q. Do you know whether he has ever resided in this vicinity?

A. He resided in—I wouldn't say in this vicinity, but he has a camp at a place called Monument Point on the Tanana River about thirty or forty miles west of Fairbanks.

Q. Do you know where he is now?

A. I have learned today where he is, yes.

Q. Where is he? A. In Portland, Oregon.

Q. Have you had a subpoena for him to testify in this case? A. Yes, sir.

Q. Have you been able to serve that subpoena?

A. I have not been able to serve it, no. [206]

Q. And you just learned today that he is in Portland, Oregon?

A. This morning we learned that he is in Portland, Oregon.

Mr. Arend: That is all.

Cross-Examination

By Mr. Taylor:

Q. How long have you had this subpoena, Mr. Buckley?

A. Oh, I guess we have had it over a month.

(Testimony of John J. Buckley.)

Q. Had you made a search of the records of the transportation companies to see if Mr. Lymp had gone outside?

A. No, we hadn't. We supposed until this morning that he was at Monument Point, and we had asked two or three of the airplane companies, when they were flying over that way, to find out whether they could land, and none of them had reported that they could land there. We tried to get down there by boat, and no one would take us down there, because they were sure they couldn't get over the low water.

Q. Is Monument Point down on the Tanana River?

A. Yes, it is about thirty, forty miles down the Tanana River from Fairbanks.

Mr. Taylor: That is all, Mr. Buckley.

Mr. Arend: That is all. The Government rests.

(Witness excused.) [207]

Mr. Taylor: If the Court please, at this time we would like to move for a judgment of dismissal as to Count I in the Indictment upon the grounds that there isn't sufficient, or, that there is no proof that the property described in there is property of the United States government, and the further ground that the allegations therein do not constitute a crime.

We make the same motion as to Count II, for judgment of dismissal, upon a total failure of proof; that there is no testimony in this case and it hasn't

been shown that this property is the property of the United States of America. There is nothing in the record to show that it is United States government property.

And particularly as to Count II, I wish to call the Court's particular attention to the serial number of the refrigeration unit is entirely different to the serial number as alleged in the Indictment.

The Court: It wasn't admitted in evidence anyway, the refrigerator.

Mr. Taylor: Well, consequently, then, Count II would necessarily have to be dismissed?

The Court: Make your motion and your argument.

Mr. Taylor: If your Honor please, I just made the motion.

The Court: And let the District Attorney make a reply.

Mr. Berrett: Your Honor, we wish to resist the motion [208] as to both counts, the two motions, if they are separate motions. As to Count I, counsel seems to base his contention that Count I should be dismissed on the grounds that the government had failed to establish government ownership of the range in question. I wish merely to refer to the testimony of Captain Coleman who testified that this particular range was assigned to him as government property, and the plaintiff's exhibit A is a memorandum receipt for such consignment of the range in question to Captain Coleman.

As to the motion to dismiss Count II, the testimony has been that the refrigerator has no serial

number plate upon it, the plate having been removed, so that as to the refrigerator—it is what we might refer to as the refrigerator cabinet—there remains merely the description in the complaint of one Westinghouse refrigerator, the personal property of the United States. It is true that in the complaint, in order to further identify what was taken, what is known as the refrigeration unit is described, the refrigeration unit being an interchangeable part of the refrigerator and installed separately—that is, a new unit may be installed into an old refrigerator shell—so that this becomes only a part of the property described in the complaint, in the indictment, in Count II. Now, in this particular matter as to the refrigeration unit, the testimony of the witnesses has been that the particular refrigeration unit now in this [209] refrigerator shell, or cabinet, is of the same model and style, but there was a discrepancy in one of the numbers as to the serial number upon the plate. Evidently, there was some error in drawing up the complaint on the part of the United States Attorney. However, your Honor, I would like to draw attention to the rules in regard to variance between pleadings and proof in regard to the description of an object.

The Court: Ordinarily the jury is excused before the motion is made, and, as long as this is going to be a long argument, we will excuse the jury until tomorrow morning at ten o'clock. Remember, ladies and gentlemen of the jury, do not discuss the case even among yourselves, or permit anyone to discuss it in your presence. Keep your mind free

from any opinion until the case is finally submitted to you. You are excused now until ten o'clock tomorrow morning.

(Thereupon the members of the jury left the courtroom.)

(Argument was presented by counsel for the plaintiff and counsel for the defendant.)

The Court: The motion as to the second count is granted, and it is dismissed. I meant the motion for an acquittal as to the second count is granted, and I will deny it as to the first count.

Mr. Arend: Your Honor, will the jury be so informed in the morning. I think it would be of help to them to know we are proceeding only on Count I.

The Court: Yes, I think so. And the marshal can remove the refrigerator and the box that it came in and the things that were in it from the courtroom. You understand what is to be removed?

The Marshal: Yes, sir.

The Court: The court is adjourned until ten o'clock tomorrow morning.

(Thereupon court was adjourned until ten o'clock a.m., November 14, 1946, at which time it was duly reconvened. All members of the jury were present.)

The Court: Are counsel ready to proceed with the trial of this case of the United States vs. Cutting?

Mr. McCutcheon: Yes, your Honor.

Mr. Arend: Yes.

Mr. Taylor: Has the Government rested, your Honor?

Mr. Arend: Yes, your Honor.

Mr. Taylor: Call the United States Attorney.

Mr. Arend: I reserve the right to argue the case, your Honor.

Mr. McCutcheon: Yes, we stipulate that. [211]

HARRY O. AREND

called as a witness on behalf of the defendant, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. McCutcheon:

Q. Mr. Arend, you have heard the testimony of Mr. Hall on the witness stand that he had never discussed the case with you at any time. Now, we are wondering if that statement was true or false. Was it?

A. I have discussed the case with him; that is, to the extent that I have asked him his story.

Q. Well, that is enough. Now, Mr. Hall then lied when he said he had not discussed the case with you, didn't he? Answer "yes" or "no." Just "yes" or "no."

A. I can't answer that "yes" or "no."

Q. You can't answer that "yes" or "no?"

A. I don't know what was in his mind. You didn't go into it very thoroughly with him, the matter of what you meant with "discuss the case."

(Testimony of Harry O. Arend.)

Q. You understood what we meant, didn't you? Did you?

A. I think I understood what you meant.

Q. Well, do you think that the question was put in a fair and clear manner?

A. No, I don't. Personally, I think the way you put the question—— [212]

Mr. Taylor (Interposing): If the Court please, we object to any personal opinions on it from the District Attorney.

The Court: I think he is entitled to explain what he means.

Mr. McCutcheon: Yes, he is, your Honor, but the explanation must follow the question; isn't that correct?

The Court: Well, it should be called for by the question. I think he is entitled to explain what he means.

A. In my experience in examining witnesses, I have found that when that question is asked, they immediately think that you are trying to discover whether or not someone else suggested certain answers to the witness for him to use on the witness stand, and, naturally, their reaction is, "No, I didn't do anything like that; I didn't discuss it with him."

Q. So, then, you mean to say that Mr. Hall's natural reaction was to lie? You mean that that was his natural reaction?

A. I don't know about that. I can't answer that.

Mr. McCutcheon: Was there any cross-examination?

(Testimony of Harry O. Arend.)

Cross-Examination

By Mr. Berrett:

Q. Mr. Arend——

Mr. Berrett: I wonder, for the benefit of the record, if the reporter would read from the record the questions that were put to Mr. Hall in this regard? [213]

The Court: No, I don't think that is a proper method of examination.

Q. (By Mr. Berrett): Mr. Arend, do you recall the question of counsel to Mr. Hall as asking him whether or not he had been told by you what to say on the stand?

A. That sort of statement was never put to Mr. Hall while he was on the witness stand, as I remember it.

Q. Did you at any time tell him what to say when he would be called on the stand?

A. I did not.

Mr. Berrett: That is all.

Mr. McCutcheon: That is all.

Mr. Taylor: If the Court please, I would like to excuse Mr. Arend at this time for the purpose of recalling him on another matter later, on something we will connect up later.

Mr. Arend: No objection.

(Witness excused.) [214]

STANLEY D. BASKIN

called as a witness on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Mr. Baskin, you were the Federal Bureau of Investigation agent at Fairbanks during the investigation of the disappearance of the stove and refrigerator at Ladd Field? A. I was.

Q. And you were in communication with the Federal Bureau of Investigation agent at Anchorage, Alaska, Mr. Norton? A. Yes.

Q. Will you state whether or not you had ever received any communication from Mr. Norton regarding Mr. O'Neil, M. W. O'Neil?

A. Yes, I did.

Q. And following that communication, did you ever make any search or investigation as to the whereabouts of Mr. O'Neil?

A. Now, that is M. W. O'Neil?

Q. M. W. O'Neil? A. Yes, I did.

Q. What was the extent of that search, Mr. Baskin?

A. I inquired at the personnel office at Ladd Field, the United States employment service at Fairbanks, the Marshal's office, the police department, and the hotels. [215]

Q. Did you make any further investigation?

A. I reviewed the telephone directory, and I don't—yes, I inquired from the power department of the Northern Commercial Company.

(Testimony of Stanley D. Baskin.)

Q. Did you search the records, or have the records of the transportation companies searched?

A. I searched some of them; that is, the Alaska Airlines and Pan American Airways. I did inquire there for about—oh, about six months prior to—well, from around April through December of 1945.

Q. Did you make any search of the city clerk's office or the licensing office who issues driver's licenses?

A. No, I don't think I did inquire at the city clerk's office.

Q. Mr. Baskin, did you ever see the statement of Mr. Cutting which was made before Mr. Norton at Anchorage?

A. I never saw the original statement, no.

Q. Mr. Norton never showed you that statement?

A. No, I never saw it.

Q. Have you ever read it?

A. No. Well——

Q. (Interposing): Did Mr. Norton ever direct you or suggest to you to make a search of the garbage dump out here to see if a washing machine, which he stated had been thrown away, could be found out there?

A. No. [216]

Q. You made no search for that?

A. I did not.

Mr. Taylor: That is all, Mr. Baskin.

Mr. Arend: No cross-examination.

(Witness excused.) [217]

AUDREY CUTTING

called as a witness on behalf of the defendant, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you please state your name?

A. Mrs. Audrey Cutting.

Q. Where do you reside, Mrs. Cutting?

A. Anchorage, Alaska.

Q. And are you the wife of the defendant, Percy James Cutting? A. I am.

Q. How long have you and Mr. Cutting been married? A. A little over a year.

Q. And where were you married?

A. Fairbanks, Alaska.

Q. How long have you resided in the Territory of Alaska, Mrs. Cutting?

A. Just about five years.

Q. And where has that residence been in Alaska?

A. Well, it has been in both Anchorage, Nome, and Fairbanks.

Q. And what has been your occupation prior to your marriage to Mr. Cutting?

A. Well, I was a clerk in the purchasing department of the Engineers at Fort Richardson, and I was a vocalist. [218]

Q. What was that?

A. A vocalist, a singer.

Q. Oh, yes.

(Testimony of Audrey Cutting.)

A. And I was secretary to the District Attorney at Nome, and the court reporter to the Honorable Judge Morrison at Nome.

Q. And when did you come to Fairbanks? When did you take up your residence at Fairbanks, Mrs. Cutting?

A. I took up my residence here in 1944.

Q. And what was your name prior to your marriage to Mr. Cutting? A. Audrey Henderson.

Q. Henderson. Now, did you ever engage in any business here in Fairbanks?

A. Yes, I did. I had the Mt. McKinley Ice Cream Company.

Q. When did you start that, Mrs. Cutting?

A. In the year 1945.

Q. And when did you—Have you still got that business? A. I sold it to Mr. Murton.

Q. And when was that sale made?

A. In October of 1945.

Q. Now, where is that business located, Mrs. Cutting?

A. It is located in the Moose Hall on Second Avenue.

Q. And did you have a lease on that building, or a part of it? A. Yes, I did.

Q. What particular portion of the building did you have leased, Mrs. Cutting? [219]

A. Well, I would say the front third of the building.

Q. And what street did that face on?

A. On Second.

(Testimony of Audrey Cutting.)

Q. How many floors did you have leased?

A. Two floors: the ground floor and upstairs.

Q. And what was on the ground floor, Mrs. Cutting?

A. The Mt. McKinley Ice Cream Company was on the ground floor.

Q. Could you state whether or not you sublet any part of the ground floor to any other person?

A. Yes. I sublet a part of the ground floor to Mr. Mears who was my partner in the ice cream business for a refrigeration shop, and then I also sublet another portion to Mr. Andrew J. Hall for an electrical shop.

Q. And what was in the upstairs, Mrs. Cutting?

A. Well, I had an apartment upstairs, but that is all.

Q. Was the apartment up there at the time that you took this building? A. No.

Q. This part of the building?

A. No, it wasn't.

Q. It was constructed after you took the lease?

A. That's right.

Q. Now, how did you have your apartment furnished, Mrs. Cutting? What did you have in your apartment?

A. Well, I had the ordinary furniture that ordinary people would have. [220]

Q. Would you state to the jury what that furniture consisted of?

A. Well, the front room had a davenport and chairs and coffee table and lamp. Both bedrooms

(Testimony of Audrey Cutting.)

had two bedroom sets, and the kitchen had a breakfast nook, a breakfast table and two benches.

Q. Did you have a refrigerator in your apartment?

A. No, I never had a refrigerator.

Q. What kind of a cooking unit did you have in there, Mrs. Cutting?

A. Well, I had a two-burner electric plate sitting on a little table.

Q. Is that the cooking unit you had during all of the time that you were in that apartment?

A. That's right.

Q. When did you move away from that apartment, Mrs. Cutting?

A. Shortly after the first of November.

Q. What year? A. 1945.

Q. And at any time prior to that did you have an electric range such as shown over there?

A. No.

Q. At any time while you had that lease, Mrs. Cutting, did you have a range similar to that stored in that building——

A. No.

Q. ——upstairs? A. No.

Q. Now, what was your husband's occupation at the time you were married?

A. He was the superintendent of the post engineers at Mile 26.

Q. And when did he start on that job, do you know? A. It was the spring of 1944.

Q. And when did he terminate that position?

A. In October of 1945.

(Testimony of Audrey Cutting.)

Q. And why did he terminate that position, Mrs. Cutting?

A. Well, he was given an advancement and transferred to Fort Richardson.

Q. And do you remember the date, or approximately the date that he first went to Fort Richardson?

A. Well, it was the latter part of October.

Q. Of 1945? A. That is correct.

Q. And did he return to Fairbanks after that?

A. No, not after he was finally transferred. First he made the arrangements on the position, and then he came back here and had a clearance and then went back to Fort Richardson, and that all took place in October.

Q. How long prior to that had you and Mr. Cutting married? What did you say was the date of your marriage? A. It was in October.

Q. Then it was the latter part of October that Mr. Cutting went [222] to Fort Richardson to take up his duties down there? A. That is correct?

Q. And what was the date—I forget the date that you said you sold to Mr. Murton.

A. We sold—rather I sold—Mr. Mears and myself sold the ice cream factory to Mr. Murton on the first of October, but Mr. Murton did not actually take possession of the place until the first of November, 1945.

Q. Then after Mr. Cutting went to Anchorage, did you later go to Anchorage?

A. That is correct.

(Testimony of Audrey Cutting.)

Q. And what, if anything, did you take with you to Anchorage, Mrs. Cutting?

A. Well, I took all of our household possessions.

Q. Among those, what was the principal articles among those household possessions?

A. Well, I didn't take any of the furniture. I let Mr. Murton have the furniture, but I took all of our blankets and bedding, and we had purchased an electric range and refrigerator the first of September, and I had had that packed, and we took that with us.

Q. Where was that refrigerator kept, Mrs. Cutting?

A. I stored it in the passageway. We had a good deal of storage there between Mr. Mears and myself, and there was only room for this refrigerator in this passageway. [223]

Q. And where was the electric range stored?

A. The electric range was stored in the back there of the Schmidt building where Mr. and Mrs. Schmidt lived.

Q. How long had you had that electric range and refrigerator, Mrs. Cutting?

A. Well, as I said, we purchased that the first of September, 1945.

Q. And who had you purchased it from?

A. From a Mr. O'Neil.

Q. Do you remember his initials?

A. Yes. M. W. O'Neil.

Q. And would you state whether or not there were any other articles that were purchased at the

(Testimony of Audrey Cutting.)

time that you purchased the refrigerator and the electric range?

A. Well, we purchased a washing machine and Mexican dishes and waffle iron.

Q. What make of a refrigerator was it?

A. It was a Westinghouse.

Q. And what make of a range was it?

A. Westinghouse.

Q. Do you know the year model of the electric range, Mrs. Cutting?

A. No, I don't. It wasn't a new model, that I know.

Q. Would you take a look at that range, Mrs. Cutting, and state whether or not that was the range purchased by you? [224]

A. Well, that is not the range that we purchased.

Q. Why do you state that that is not the range that was purchased by you?

A. Because in the first place the oven was raised; it was an old-fashioned type.

Q. Would you just step over there and illustrate to the jury the construction of the range that you purchased from Mr. O'Neil? Step to one side there and just show how the range hood was.

A. Well, if this had legs, I could show better. It wasn't sitting this high. The oven was way up. There were four burners. The oven was up, and there wasn't any place underneath to store anything. This has a storage compartment, but that isn't it. There wasn't any storage compartment.

(Testimony of Audrey Cutting.)

Q. Well, you may resume your seat, Mrs. Cutting.

(The witness returned to the witness stand.)

Q. Now, you mean, then, that the oven was built above the general level of the burners?

A. That's right.

Q. When did you first see Mr. O'Neil?

A. Well, Mr. O'Neil was sort of an infrequent purchaser of ice cream, as most people come in and buy ice cream every now and then; that is the way he was. I don't know who he was.

Q. Did you know his name prior to the time that you purchased the electric range from him?

A. No, I did not. [225]

Q. And about what was the date that you purchased that? A. About the first of September.

Q. And would you state to the jury just what negotiations you had leading up to the purchase of this equipment that you have described?

A. It would seem that everyone knew, I suppose, that my husband and I were planning on getting married, so naturally we were looking for furniture and household things, and I had mentioned to several of my friends that if they possibly would ever find an electric range or refrigerator or knew of anyone that wanted to sell one to please let us know. Well, Mr. O'Neil came in every so often and bought ice cream, and one day he said to me, he said, "I have some household furniture for sale, and I have a washing machine and electric range and refrig-

(Testimony of Audrey Cutting.)

erator for sale," and he said, "Would you like to buy it"; and I said, "Well, I would want to see it first, but," I said, "so far as the furniture is concerned, we just bought our furniture, but if you will bring the range and refrigerator and washing machine here, and, if it is anything at all, why, we would like to buy it;" and he says, "All right." He says, "I already have it on a truck," he says; "I was planning on going to Anchorage, and, if I don't sell the furniture here, I want to sell it there," and he says, "I will bring it around tomorrow night." Well, we waited the next night, but he didn't come. Then finally he came on Saturday night. [226]

Q. And about what time did he arrive there, Mrs. Cutting?

A. Well, it was after nine o'clock in the evening, because I remember we had just finished making ice cream.

Q. And did he have these things on the truck?

A. Yes, he did.

Q. And what happened then?

A. Well, Sandy and I were there, and, naturally, I left it in his hands mostly, because I wanted him to check particularly on the mechanism, and I felt that he knew more about it than I did, so I let him negotiate with Mr. O'Neil.

Q. And were you present at the time of those negotiations? A. Yes, I was.

Q. What was the result of those negotiations?

(Testimony of Audrey Cutting.)

A. Well, we decided to purchase it, but Mr. O'Neil said that he was leaving that evening for Anchorage, and, if we could pay him in cash; well, he didn't have the, or Sandy didn't have the whole full \$300.00, so I loaned the \$115.00 to make up the purchase price on it.

Q. And then what did you do?

A. I asked him if he could give us a bill of sale on the range and refrigerator and washing machine, and he said, yes, he could, so I drew up one.

Q. Did he give you a bill of sale?

A. I drew the bill of sale up.

Q. I hand you a piece of paper, Mrs. Cutting. Will you state what that is? [227]

A. That is a bill of sale.

Q. Who is it signed by? A. Mr. O'Neil.

Q. What is the initials? A. M. W.

Mr. Taylor: May I have that marked for identification?

(Thereupon a Bill of Sale, dated September 1, 1945, was marked by the clerk of the court as Defendant's Identification A and is in words and figures as follows:)

“Bill of Sale

“That for the consideration of \$300.00 (three hundred dollars), M. W. O'Neil of Fairbanks, Alaska, sold to P. J. Cutting, the following items of household items:

“One Westinghouse Electric Range,

“One Montgomery Ward Washing Machine,

(Testimony of Audrey Cutting.)

“One Westinghouse Refrigerator,

“One Waffle Iron,

“And One Set of Mexican Pottery Dishes.

“M. W. O’Neil assigns all interest of said goods and further claims that household goods are clear of any indebtedness.

“Dated this First of September, 1945, in Fairbanks, Alaska.

“Signed M. W. O’Neil

Bellingham, Wash Gen Del

“Witnessed Audrey Henderson”

Q. And you state that this is the bill of sale that was given you on the evening of the day that you——

A. (Interposing): That’s right.

Q. ——purchased the articles?

A. That’s right.

Mr. Taylor: If the Court please, we would like to offer this in evidence.

Mr. Arend: Your Honor, we object to it. I don’t believe that this party who has signed the name has been sufficiently identified to even establish that there is such a man or that this is his signature.

The Court: Objection overruled. It may be admitted.

(Thereupon Defendant’s Identification A was marked as Defendant’s Exhibit No. 1 by the clerk of the court.)

(Testimony of Audrey Cutting.)

Q. Would you read that to the jury?

(Thereupon the witness read Defendant's Identification A as hereinabove set forth.)

Q. Now, after getting that bill of sale, Mrs. Cutting, what was done with the refrigerator?

A. Well, the refrigerator was unloaded there at the ice cream place and put in this passageway. There was only room in the whole place just in this passageway.

Q. And what was done with the electric range?

A. The electric range was taken over to the Schmidt building and stored in the back part. [229]

Q. And what was done with the washing machine?

A. And the washing machine was also left there.

Q. And the other articles that are mentioned in the bill of sale, where were they placed?

A. I took those upstairs with me—the dishes and waffle iron.

Q. Did you ever use the refrigerator in the place down there, Mrs. Cutting?

A. No, I did not.

Q. Did you ever have other refrigeration units in the ice cream parlor? A. That's right.

Q. And did you ever use the range upstairs?

A. No.

Q. Were they, either of them, ever installed in the building or the ice cream company?

A. No.

(Testimony of Audrey Cutting.)

Q. What did you do with the washing machine?

A. Well, I had my husband look the washing machine over, because it was an old type of washing machine. I wanted to see if it was well worth shipping. He said it wasn't, because there was a crack in the tub, and it couldn't be repaired, so he took it out to the dump and dumped it.

Q. Was any effort made to repair it?

A. No.

Q. You just stated it wasn't worth shipping. Had you any plans [230] on shipping this stuff some place?

A. Well, by that time we knew that he was going to be transferred to Anchorage. There had been rumors of it.

Q. And is that the reason that you didn't set the range up in your apartment?

A. That's right, because I had offered the place for sale in September.

Q. And it was your intention to move the refrigerator and stove and other things to Anchorage?

A. That's right.

Q. Mrs. Cutting, just state to the jury what Mr. Cutting's physical condition was at the time that these articles were purchased from Mr. O'Neil?

A. Well, Mr. Cutting doesn't feel very well at times, and I know that he can't lift anything.

Q. Just state, to your knowledge, what his physical condition is. What is the matter?

A. Well, he has five broken vertebrae in his back, and I know that he can't stoop over, because I have had——

(Testimony of Audrey Cutting.)

Q. (Interposing): Just a moment. We will get into that later. When did that happen?

A. That happened in the Gillam wreck.

Q. Mr. Cutting was in that wreck?

A. That's right.

Q. You may go ahead about his condition then.

A. And as a result of the Gillam wreck, he had five vertebrae broken, and I know very well that—well, it is hard for him to move around, and he can't stoop over, and he can't lift things.

Q. Since you have been married, have you ever seen Mr. Cutting lift any heavy objects?

A. I have not.

Q. Would it be possible for Mr. Cutting to carry an electric range or refrigerator up a stairway?

A. I would say that it was an impossibility.

Q. What, if anything, does he wear for his back?

A. He wears a support, a harness; it is almost like wearing the back of chair strapped to him.

Q. What is it made out of? A. Steel.

Q. And does he wear that all of the time?

A. He does.

Q. And without that, or even with it, it is impossible for him to lift any weights?

A. That is correct.

Q. You have seen that harness, I suppose, Mrs. Cutting? A. Yes.

Q. Where is that harness now?

A. It is on Mr. Cutting.

(Testimony of Audrey Cutting.)

Q. Now, you say that Mr. Cutting went to Anchorage in the [232] latter part of October to assume his duties at Anchorage?

A. That is correct.

Q. Is that at Fort Richardson?

A. That is correct.

Q. And what position did he hold there?

A. He was in charge of operations for the post engineers.

Q. And did you go down there later?

A. I did.

Q. And I believe you stated that you packed up all of your equipment. How did you send that down, Mrs. Cutting?

A. I sent it down in an N. C. truck.

Q. And do you know who was driving that truck? A. Mr. Hardy.

Q. And did you pack this material, this equipment that was sent down?

A. Well, I packed all of the household items, with the exception of the range and refrigerator.

Q. And who packed those?

A. I asked Mr. Hall to pack them for me.

Q. And did he do it? A. He did.

Q. Did he make the boxes that they were in?

A. That is correct.

Q. And where did he pack them?

A. He packed the refrigerator in the ice cream building, and the [233] range in the Schmidt building.

(Testimony of Audrey Cutting.)

Q. Where is the Schmidt building located, Mrs. Cutting?

A. Well, it is right next door to the Glover's tire shop in the Pioneer Hotel.

Q. And is that the building that is occupied partly by the Veterans of Foreign Wars?

A. That's right.

Q. And you stated you shipped these down to Anchorage by Mr. Hardy, Leo Hardy?

A. That is correct.

Q. Did you go down there at the same time, Mrs. Cutting?

A. I shipped the items first, and then I left a few days later by train.

Q. And where next did you see those boxes of equipment, household furnishings, that you had sent down?

A. They were on the truck at the N. C. Company.

Q. In Anchorage? A. That is correct.

Q. Were all the boxes on the truck, Mrs. Cutting? A. Yes, they were.

Q. And was that in the N. C. store?

A. That is in the N. C. warehouse.

Q. And how long after you got to Anchorage did you see those boxes on the truck?

A. Well, when I arrived, I asked my husband if he knew if they [234] had arrived, and he said, yes, they were there, and, well, I didn't see them for at least a week.

(Testimony of Audrey Cutting.)

Q. And did you go to this warehouse to see them?

A. No. I went there with my husband and Mr. Fowler.

Q. And what did you do at that time, Mrs. Cutting, if anything?

A. Well, we moved the range and refrigerator out of the truck onto a truck that we had borrowed and stored it at Mr. Fowler's place.

Q. Where did you store it?

A. We stored it at Mr. Fowler's home.

Q. Why did you store those articles there, Mrs. Cutting?

A. Well, we were—we had rented a place at the Fort quarters at the Fort.

Q. By "Fort" do you refer to Fort Richardson?

A. That is correct, at Fort Richardson, and they already had electric ranges and refrigerators in their quarters.

Q. And there was no necessity of taking the range and refrigerator that you had sent down, then, to Fort Richardson? A. That is correct.

Q. What did you do with the other items, the other boxes that—

A. (Interposing): Well, we left them on the truck with the idea of taking them out to the post and unloading them at the quarters.

Q. Did you ever take them out to the post, then, Mrs. Cutting? A. No, we didn't. [235]

Q. Why didn't you?

A. Because we bought a home from the N. C. Company.

(Testimony of Audrey Cutting.)

Q. And where was that located?

A. That was located at 733 Fifth.

Q. And did you move them? Did you ever move the refrigerator and the range to the home that you purchased?

A. No, we didn't.

Q. Why?

A. Well, we were just about ready to when it was taken away from us.

Q. By who?

A. By the Federal Bureau of Investigation.

Q. Did you talk to any of the—did any of the Federal Bureau of Investigation men tell you why they were taking the stove and refrigerator?

A. They didn't tell me why.

Q. When did you first learn that the Federal Bureau of Investigation was interested in those particular items?

A. When they came to my home.

Q. Well, Mrs. Cutting, when did you first become suspicious that there might be something wrong in regard to the range and the refrigerator?

A. Well, my husband came home——

Q. (Interposing): Just state about when.

A. Well, I would judge about a week before the Federal Bureau [236] investigator came to the house.

Q. Now, go ahead and tell why you became suspicious of it.

A. Well, we were staying at the Anchorage Hotel at the time, and my husband came home, and he told me that he had been called to the

(Testimony of Audrey Cutting.)

Military Intelligence office at Fort Richardson and asked if he knew where there were any missing ranges and refrigerators; that there were some missing at Ladd Field; and they also asked him if he knew—if he had bought any refrigerators and ranges. Well, we just—we talked it over and we suddenly realized that maybe we had been duped in buying the refrigerator and range and that, well, the best thing we could do was to deny having it until we knew what the story was.

Q. And did you deny having them?

A. Yes, we did.

Q. When did you make that denial and who to?

A. Well, as I said, about a week later the Federal Bureau of Investigation called my husband and asked him to call at their office, and, as a result of the conversation at the office, they came to our home and that time was when they talked to me.

Q. What time of day did they come to your home, Mrs. Cutting?

A. Well, it was in the evening; it was after eight o'clock.

Q. And what was said at that time regarding this refrigerator and range? Did you still deny that you had them? A. I did. [237]

Q. And what else was said or done there that evening by—or, just state who was in the home at the time, Mrs. Cutting?

A. Well, my husband was there, and my daughter and myself.

(Testimony of Audrey Cutting.)

Q. How old is your daughter, Mrs. Cutting?

A. She is fourteen, going on fifteen.

Q. And you say it was in the evening that the F. B. I. men came there? A. That is correct.

Q. And what did they say or do?

A. Well, first they asked me if I knew where there was any missing refrigerator and ranges, and I said I didn't know where there were any missing refrigerators and ranges and why did they ask me if there were any missing refrigerator and range, and Mr. Baskin said, "I will ask the questions, and you answer them." And so he wanted to know if I had ever had a range and refrigerator in the apartment upstairs of the Ice Cream Company, and I told him, no, that we never did have a range and refrigerator up there; so then he wanted to know if we had bought or purchased a range or refrigerator here—and, of course, though I don't mind saying it, I was scared to death—and I said, no, we hadn't, because I realized then that we had been duped into buying something that had been stolen.

Q. Do you know—or, who thought so?

A. We thought so. [238]

Q. And then what did they do?

A. Well, then they wanted to search the house, and my husband told them that he didn't think that was fair, inasmuch as they didn't have a warrant, and he objected to it; and they said, "Well, we are here already. You might as well let us look at the house, because we are going to anyway."

(Testimony of Audrey Cutting.)

Q. Then what did they do?

A. They went through the house.

Q. How big a house was that, Mrs. Cutting?

A. It was about six rooms.

Q. One floor, or two or three?

A. Two floors.

Q. And what rooms were in the downstairs?

A. Well, there was a front room, kitchen, bedroom, and a large back porch.

Q. What is upstairs? A. Two bedrooms.

Q. And who occupied those bedrooms?

A. Well, my daughter occupies one of them.

Q. Now, in all of the time you were having conversation with the F. B. I. men downstairs—just a moment, the F. B. I. men; who do you mean by “F. B. I. men”? Do you know their names?

A. Well, there was Mr. Baskin and Mr. Norton.

Q. During the time you had your talk with these men, was your daughter present at all times? [239]

A. She was downstairs at the time the conversation first started, and later when they, before they decided to search the house, I thought it wasn't best for her to listen to all of it, so I sent her up upstairs.

Q. Now, in carrying out this search, where did the F. B. I. men go?

A. First they went through the main floor; that is, the front room and bedroom and kitchen and back porch, and the basement.

Mr. Arend: If the Court please, now we object to any further questioning about the search, unless

(Testimony of Audrey Cutting.)

it is first shown that something was taken as a result of the search; otherwise it is immaterial in this case.

The Court: Objection sustained.

Mr. Taylor: Well, if the Court please, I believe Mr. Baskin stated himself that he conducted a search in the place. I think we have a right to show what was done in regard to that search to rebut some of the statements made by Mr. Baskin. They opened up the subject themselves, your Honor.

The Court: The objection is sustained.

Q (By Mr. Taylor): Mrs. Cutting, did they go in the basement? A. Yes, they did.

Mr. Arend: We object to that, your Honor, and ask that the answer be stricken.

The Court: It may be stricken.

Q. (By Mr. Taylor): Mrs. Cutting, how is your—how is the [240] house in Anchorage heated?

A. It is heated by oil.

Mr. Arend: We object to that as irrelevant and immaterial and ask that the answer be stricken.

The Court: The objection will be overruled.

Q. How is it heated, Mrs. Cutting?

The Court: You are objecting to the question, "How is it heated at the present"? That is immaterial.

Mr. Arend: And move that the answer be stricken.

The Court: It may be stricken.

Q. (By Mr. Taylor): What sort of furnace do you have in the basement, Mrs. Cutting?

A. Oil furnace.

(Testimony of Audrey Cutting.)

Q. And do you have any coal in the basement?

A. No.

Mr. Arend: We object to that, your Honor, as irrelevant and immaterial and move again that the answer be stricken.

The Court: It may be stricken.

Mr. Taylor: If the Court please, I can't understand the court's ruling on this.

The Court: It makes no difference what kind of heating plant they have now. You are speaking of the present, what is in the cellar now.

Q. (By Mr. Taylor): At the time that the search was made, what kind of heating apparatus did you have in the house, Mrs. Cutting? [241]

Mr. Arend: We make the same objection: that it is irrelevant and immaterial, your Honor.

The Court: Objection overruled.

A. It was an oil furnace.

Q. And did you at that time of that search have a half a ton of coal in the basement? A. No.

Q. Now, following this search by the F.B.I. agents, did you have any further conversation with them, Mrs. Cutting? A. Yes, we did.

Q. Where did that take place?

A. That took place in the Federal Bureau of Investigation office.

Q. In Anchorage? A. In Anchorage.

Q. And who was present at that time, Mrs. Cutting? A. Mr. Norton.

Q. And who else?

A. And Mr. Cutting and myself.

(Testimony of Audrey Cutting.)

Q. And about what time of day did that take place: in the morning or afternoon or evening?

A. It was in the afternoon.

Q. And what was the subject matter of that conversation?

A. Well, he called my husband up, and he said, "I would like to have you call at the office." So we—of course, we had been lying awake all night thinking about it, and we knew [242] that something was the matter, and we didn't know what to do. So when Mr. Morton called us both in the office, he said, "Now, look," he says, "we know that you bought and purchased a range and refrigerator, and we want to know all about that, the truth and nothing but the truth and the whole truth." And so both myself and my husband told Mr. Norton that we were going to tell him the truth about it, and he said, "Well, it had better be the truth, because, if it isn't, I am not interested in listening to it." So I told him, I said, "Well, we have a bill of sale for the range and refrigerator," and so then he told me to go home and get the bill of sale, and I went home and I got the bill of sale, and I came back and gave it to him.

Q. Is that the bill of sale you just read to the jury here just a few moments ago, Mrs. Cutting?

A. Yes, that's right.

Q. And what else was done at that time?

A. Well, he asked us the whole story, and we told him how we got it, what we had bought, and I told him that I had part of the dishes that I had purchased at the time packed in the refrigerator.

(Testimony of Audrey Cutting.)

Q. At that time did Mr. Norton prepare a statement?
A. Yes, he did.

Q. And was you there at the time that it was prepared?

A. Well, I was there when he was typing all of our answers. [243]

Q. And was you there when Mr. Cutting signed it?
A. No.

Q. Was there any other agent besides Mr. Norton there?
A. No.

Q. Do you know an agent by the name of Wright?
A. I don't believe I do.

Q. At the time you was talking to him, you say Mr. Norton was taking this down, taking down the statements?
A. That's right.

Q. And do you know whether or not Mr. Cutting afterwards signed a statement that was prepared by Mr. Norton?

A. Well, he told me that he signed it.

Mr. Taylor: May we have a short recess, your Honor?

(A ten-minute recess was taken, after which court was duly reconvened. All members of the jury were present.)

The Court: Are counsel ready to proceed with the case?

Mr. Taylor: Defendant is ready, your Honor. You may take the witness.

The Court: Yesterday a motion was made for a judgment of acquittal on the matters charged in Count II of the Indictment. The motion was

(Testimony of Audrey Cutting.)

granted, and I have signed the judgment of acquittal as to Count II, so that is out of the case.

Cross-Examination

By Mr. Arend:

Q. Mrs. Cutting, who owns the Moose [244] Hall? Who did own the Moose Hall at the time you lived there?

A. When I first lived there, it belonged to Mr. and Mrs. Morrison.

Q. That was the auctioneer? A. Yes.

Q. And then who purchased it from them?

A. Mr. and Mrs. Ben Grueneich.

Q. Do you know when the transfer was made between these two parties?

A. It was sometime in July.

Q. Of 1945? A. That is correct.

Q. Do you know Mr. Charles V. Cors?

A. Yes.

Q. Did he do any work on the apartment upstairs? A. Yes.

Q. Now, you have mentioned to the jury here a man by the name of M. W. O'Neil. Will you please describe him to the jury?

A. Well, he was—I imagine he looked like he was around about forty years old. He had a rather fair complexion and light brownish hair.

Q. Was he a big man?

A. Blue eyes, and it seemed that he was getting gray, just a little bit, along the temples—grayish.

Q. Was he a large man, or a small man?

A. No.

(Testimony of Audrey Cutting.)

Q. Did he have a family?

A. Well, I didn't know.

Q. Oh, I am sorry. You said, no, he was a large man or small man.

A. He was a medium-sized man.

Q. And you don't know whether he had a family?

A. No.

Q. Where did he live here in town?

A. I don't know.

Q. Where did he work?

A. That I don't know.

Q. Do you know whether he owned the truck that he brought the household goods on to your place? A. No, I don't.

Q. Was it a U-Drive truck?

A. He never said.

Q. Well, did you look to see?

A. Not particularly.

Q. Can you describe the truck to us?

A. Well, it was red colored, and it had a band around the side of it about half-way.

Q. Did you check the serial number on the range that you bought from this man? [246]

A. No.

Q. Did he show you any evidence of title that he had to the range and the other household goods?

A. No.

Q. When did you first learn that you would not need the refrigerator or the range at Fort Richardson, these items that you claim that you had bought from Mr. O'Neil?

(Testimony of Audrey Cutting.)

A. When my husband first rented the quarters there.

Q. That was the latter part of October?

A. That was the latter part of November.

Q. The latter part of November?

A. That is right.

Q. Why did you buy the range and the refrigerator from Mr. O'Neil?

A. Because we needed one; we wanted one.

Q. You know Mr. Hall, of course. You said he crated the box that is standing there?

A. That's right.

Q. He made that crate. Now, I would like to have you turn your attention to December 24, 1945, in the Model Cafe, during the noon hour. Did you have lunch with Mr. Hall that day?

A. That is correct. He invited me to lunch.

Q. Now, did you, in a conversation with Mr. Hall at that time, in his presence and with no one else there in the immediate vicinity, make this statement to Mr. Hall: that he should [247] stick with the story that he did not know where you and your husband obtained the electric range and refrigerator which were taken to Anchorage and, if questioned, to state that he supposed you obtained them at the time and place you got the furniture?

A. I did not.

Q. And did you add, "You are the only one that can really do us any harm, and, if you tell anything, we will go down together"?

A. I did not. I asked for his help.

(Testimony of Audrey Cutting.)

Q. You say you did ask for his help?

A. That is correct.

Q. In what way?

A. Because I was trying to find trace of Mr. O'Neil, and I told him of our predicament.

Q. Now, I will call your attention to the first of October, on or about the first of October. Did you make an offer to Mrs. Grueneich, in her apartment, which is located on the first floor of the Moose Hall, to sell her a Westinghouse electric range and refrigerator? A. I did not.

Q. Did you ask her what she would pay for an electric range and refrigerator at that time and place? A. No.

Q. Did Mrs. Grueneich state to you that, after all if you had [248] purchased the range and refrigerator, you had invoices on the same and ought to know how much to ask for them?

A. She did not.

Q. I show you Plaintiff's Identification No. 13, and ask you if you recognize the signature at the bottom of that paper. A. That's right.

Q. Whose is that?

A. That is my husband's signature.

Q. Have you seen that before, that identification?

A. No, I don't believe so.

Q. Didn't you give that identification to Mr. Hall, or tell Mr. Hall that you were going to send that identification to him to be placed in the files and records at Ladd Field?

A. Mr. Arend, I have never seen this before.

Q. You never have? A. I never have.

(Testimony of Audrey Cutting.)

Q. You never made such an offer?

A. I never made such an offer.

Q. To Mr. Jackson—— A. No.

Mr. Arend: No further questions.

The Court: Any further questions of this witness?

Mr. Arend: I would like to ask one more question.

The Court: Very well.

Q. (By Mr. Arend): Mrs. Cutting, has a doctor ever recommended [249] a fission operation for Mr. Cutting's back injury? A. That is correct.

Q. And that was last winter?

A. That is correct.

Q. Has that operation been performed?

A. No.

Mr. Arend: That is all.

Redirect Examination

By Mr. Taylor:

Q. Mrs. Cutting, is that operation going to be performed? A. Yes, it is.

Q. When?

A. Well, we were hoping when this trial was over.

Q. What is your physical condition at the present time, Mrs. Cutting?

Mr. Arend: We object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Taylor: That is all.

(Witness excused.) [250]

CHARLES WARD

called as a witness on behalf of the defendant, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. Charles Ward.

Q. Where do you reside, Mr. Ward?

A. 115 Eighth.

Q. In Fairbanks? A. Yes, sir.

Q. How long have you resided at Fairbanks?

A. Since May of '43.

Q. How long have you lived in Alaska?

A. Since that time.

Q. You came from the States here?

A. Yes.

Q. What is your occupation at the present time, Mr. Ward?

A. I am in business for myself—rug and furniture cleaning business, reupholstering.

Q. Will you state whether or not you have worked for the government here at either Ladd or Satellite Field?

A. I worked for them constantly from May of '43 until June of '46. [251]

Q. Where did you work from May '43 on?

A. From May '43 until February, '45, I worked at Ladd; from February of '45 until the first of July of '45, I was at Satellite.

(Testimony of Charles Ward.)

Q. And what were you doing at Ladd Field? What was your particular position there?

A. From July of '45 until June of '46, I was in the stock record section.

Q. Have you been in the stock records during all of your time at Ladd Field——

A. No, sir.

Q. ——and Satellite Field?

A. No, sir. From May of '43 until February of '45, I was a catskinner.

Q. And what were you doing at Satellite Field, Mr. Ward?

A. I was stock clerk there.

Q. Are you acquainted with Mr. Cutting, the defendant in this case?

A. Yes, sir. He was my superior there.

Q. At Satellite Field. Had you known him prior to going to Satellite Field?

A. Just met him a few times, when I hauled coal out there from Ladd Field.

Q. Was your job an office job, Mr. Ward?

A. Yes, sir.

Q. Now, would state whether or not there were any ice boxes, or refrigerators, or ranges at Satellite Field?

A. There were only two frigidaire, or refrigerators, at Satellite that I knew of. One was a kerosene-burning electrolux.

Q. Both of them?

A. No, one of them was an electric.

(Testimony of Charles Ward.)

Q. Do you know what make that was?

A. No, sir, I don't.

Q. And ranges, how about the ranges?

A. There was only one of those that I know of.

Q. What was the make of that?

A. I don't know.

Q. Now, Mr. Ward, would you state to the jury, in bringing supplies and materials and equipment into Satellite Field, or taking it out of there, what was the procedure to be followed?

A. Well, before we could get off Ladd Field with it, we had to have a tally-out signed by some authorized person to get through the gate with whatever we might be hauling; we took it into Satellite. Of course, it would be the same taking it from Satellite to Ladd; we had to have a tally-out from Satellite to get off the field.

Q. When material or equipment was brought in from Ladd Field to Satellite, what, in the way of record, was made regarding that stuff that came in?

A. I checked that in myself while I was there.

Q. And in stuff leaving Satellite Field, who made made out the tally-out sheets there?

A. I made practically all of them out. In fact, I believe I made all of them out whenever I was there.

Q. And did you sign them?

A. No, sir, Mr. Cutting signed them.

Q. Now, was that tally-out slip required for everything leaving Ladd Field or leaving Satellite Field?

(Testimony of Charles Ward.)

A. Yes, sir. You couldn't get through the gate with anything without one.

Q. Why couldn't you get through the gate?

A. The M.P.s demanded that you had a tally-out slip.

Q. And what became of the tally-out sheet when you went out?

A. The M.P.s kept that, and it is my understanding that they kept them on file.

Q. And do you know where they were filed?

A. No, sir, I don't.

Q. Now, how long were you at Satellite Field, Mr. Ward?

A. I believe it was February 12, when I went out to Satellite, and I was transferred back the following July 1.

Q. Why were you transferred on July 1, Mr. Ward?

A. That is when they were closing Satellite down.

Q. And when did they start to close Satellite?

A. It was during the month of April, I believe.

Q. And what were your duties in regard to closing the field? [254]

A. To return all engineer equipment and stock back to Ladd Field.

Q. Now, engineer equipment and stock. What do you mean when you refer to it as engineer stock?

A. The stock is miscellaneous parts and maintenance supplies; your equipment is the cats and trucks that weren't necessary in the maintenance of Satellite Field.

(Testimony of Charles Ward.)

Q. Now, did that include these ranges and refrigerators that you said were at Satellite Field?

A. Yes, sir.

Q. And in your duties as stock and record clerk there, did you check out any refrigerators or ranges?

A. I checked one electric refrigerator and one electric range.

Q. Do you know who took that out?

A. No, sir, I don't.

Q. Would you have any record of that?

A. It should be on record, but I don't know just where it would be, because there were trucks from Ladd Field as well as our own that was hauling that merchandise in.

Q. Now, you stated in going out the gate, the M.P.s were there? Just what did they do?

A. Well, they would ask you for a tally-out. If you didn't have one signed by Mr. Cutting, you were sent back.

O. And did they check the contents of trucks against the tally-out sheets? [255]

A. Practically always, yes.

Q. And was that quite a close scrutiny?

A. Well, it was close enough so that they caught a half-inch wood chisel that wasn't on a tally-out.

Q. Just how did that take place?

A. I had borrowed this wood chisel from one of those carpenters there. It was one of his own personal tools. I didn't have a tally-out on it, and it was lying on the seat beside me, and he asked me, "Whose wood chisel is that?" I said it belonged

(Testimony of Charles Ward.)

to a carpenter down there; it had his name on it. He said I had to have a tally-out on that. I said, "Can't we call him?" But he said, "No, you have to have a tally-out." We didn't have time to go back that night, because we were riding back and forth with another man, so we had to leave the chisel behind and pick it up the next morning.

Q. Did you find out through your travels through the gate, that the M.P.s were quite diligent in the discharge of their duties in requiring a tally-out sheet on every bit of material that went out of there?

A. Much more at Satellite than they were at Ladd.

Q. Do you know where those records would be at the present time; that is, the tally-out sheets that were picked up by the M. P.s?

A. It is my understanding that those are kept at Headquarters. I am not sure. [256]

Q. Is that headquarters at Ladd? A. Yes.

Q. Or headquarters at Satellite?

A. At Ladd.

Q. Now, you state that that base was to be closed on July 1 and you left there July 1, you said, Mr. Ward?

A. I believe it was the third when I actually left there.

Q. And did you make any search or inspection as to equipment that had been left out there?

A. I went through all unoccupied buildings other than those that were under direct army jurisdiction themselves.

(Testimony of Charles Ward.)

Q. And what did you find?

A. Nothing. We locked the doors. In fact, we nailed them shut.

Q. And what time was that?

A. That was the last week of June. I don't know the exact date that that would be.

Q. Well, according to that, then, Mr. Ward, would it be possible for any range, electric range or refrigerator, to have been on Satellite Field on October 22, 1946, according to the records?

A. Not that I can see, there wouldn't be, no. It so happens that I had charge of those same cards when I was out here at Ladd, and there was never any order came through like that being returned to Satellite, and I know that there were none there when I left. [257]

Mr. Taylor: You may take the witness.

Cross-Examination

By Mr. Arend:

Q. Did you prepare all of the tally-out sheets during that time?

A. Ninety-nine per cent of them.

Q. Who might have prepared any of the others?

A. Mr. Cutting was the only other person who prepared any of the others.

Q. I show you Plaintiff's Identification 13 and ask you if that bears any of your handwriting.

A. No.

Q. Did you ever see that tally-out sheet before?

A. Well, I couldn't say as to that. I filed the duplicate copies of them.

(Testimony of Charles Ward.)

Q. Where at? A. At Satellite.

Q. Does it bear Mr. Cutting's handwriting?

A. Yes, sir.

Q. Where? A. Right here.

Q. Anywhere else except the signature?

A. Well, it all looks familiar. Yes, I would say it is all his handwriting.

Mr. Arend: If the Court please, we offer this now as having been fully identified. We offer it for the entry there [258] of two electric ranges. There are other entries, but we make only the offer for the two electric ranges, and we ask that the jury may be instructed to disregard anything else on the exhibit.

Mr. Taylor: If the Court please, we object to the instruction of this, because there is no identification of the ranges on there, except it is electric heaters and electric ranges. There is no showing that they are the range which is set out by, identified by, number in the Indictment. There is no connection with the charge here whatsoever. It is dated June 5, 1945.

The Court: May I see it?

(The instrument was handed to the Court.)

The Court: It may be admitted.

(Thereupon Plaintiff's Identification No. 13, hereinabove set forth, was marked by the clerk of the court as Plaintiff's Exhibit H.)

(Testimony of Charles Ward.)

Q. (By Mr. Arend): Mr. Ward, I show you Plaintiff's Exhibit C, being a photograph showing several buildings, two of which buildings have a letter for identification over them. Will you state, of your own knowledge, whether or not these buildings contained a Westinghouse electric range during the time you were at Satellite?

A. Well, it is hard to say. It is hard for me to identify those buildings. The one that is marked "A" looks like it might be [259] the one that Mr. Cutting occupied when the roads were bad, and he was unable to go back and forth from town, and that one building did have one electric frigidaire in it that I was speaking of a while ago, that I was speaking about awhile ago.

Q. Did it have a Westinghouse electric range?

A. It had an electric range, but what make, I don't know.

Q. I show you Plaintiff's Exhibit B and ask you if you know what that represents?

A. Yes. That is the way it was when I left the base; that is the way we nailed the door shut and put the off-limit signs up.

Q. Will you state if that is the cabin Mr. Cutting occupied when he stayed at the base?

A. Yes, it looks like it is. I can tell by the office in the back there, and the building I occupied was this type of building.

(Testimony of Charles Ward.)

Q. Do you see the same building in Plaintiff's Exhibit C?

A. It looks as though this one marked "A" is the same building. yes.

Mr. Arend: That is all.

Redirect Examination

By Mr. Taylor:

Q. Mr. Ward, when you made your inspection to see that everything was off the base, did you look in that particular building? [260]

A. Yes, sir. In fact, I nailed the door up.

Q. There was no range or refrigerator in that building?

A. There was nothing, no. I helped Mr. Cutting move his clothing out and bring it to town.

Recross-Examination

By Mr. Arend:

Q. When was that?

A. That was the last week of June.

Q. The last week of June? A. Yes.

Q. You were never out there before?

A. I was just out there casually was all.

Mr. Arend: That is all.

Mr. Taylor: That is all.

(Witness excused) [261]

SYLVIA HENDERSON

called as a witness on behalf of the defendant, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you just tell the jury your name?

A. Sylvia Henderson.

Q. You are the daughter of Audrey Cutting?

A. Yes.

Q. That testified here before? A. Yes.

Q. How old are you, Sylvia?

A. I am fourteen, going on fifteen.

Q. And Mr. Cutting, the defendant here, is your step-father? A. Yes.

Q. Where do you reside now, Sylvia?

A. In Anchorage.

Q. Did you ever reside in Fairbanks?

A. Yes.

Q. Can you recall about how long you lived here?

A. Oh, about a year.

Q. And where did you live, Sylvia?

A. Oh, part of the time I lived on Second.

Q. Just a little bit louder, Sylvia, so that the jury and the [262] court reporter and the court can hear you.

A. For part of the time we lived with the Schmidts—Mr. and Mrs. Schmidt—and the rest of the time we lived over the Mt. McKinley Ice Cream Company.

(Testimony of Sylvia Henderson.)

Q. Did you have an apartment over the Mt. McKinley Ice Cream Company? A. Yes.

Q. Was that a furnished apartment, Sylvia?

A. Well, yes, it was partly furnished.

Q. What did you have in that apartment in the line of a cooking unit? What did you use to cook on?

A. Well, we had a little electric plate—a two-burner electric plate.

Q. Did you ever have a large electric range, such as this one, in your apartment over there?

A. No, sir.

Q. Did you have a refrigerator in your apartment? A. No.

Q. At any time while you was living there, did you have one? A. No, not in the apartment.

Q. Do you know whether or not your mother or Mr. Cutting ever bought a frigidaire and electric range? A. Yes, they did.

Q. Do you know when, about when, that was, Sylvia?

A. Oh, it was about the first of September. I don't remember the exact date. [263]

Q. How do you place that about that time, Sylvia?

A. Because I remember it was before school started.

Q. In what year was that? A. 1945.

Q. And would you just tell the jury in your own words the circumstances of buying the electric range and frigidaire?

(Testimony of Sylvia Henderson.)

A. You mean how they bought it? You mean who they bought it from?

Mr. Arend: We object to that question, unless a foundation is laid to show that she was there when the purchase was made.

The Court: Objection sustained.

Q. (By Mr. Taylor): Were you present at the time that the electric range and refrigerator were purchased? A. Yes.

Q. And where did that take place?

A. Well, they looked at a range and refrigerator out in front of the Mt. McKinley, but the actual signing of the paper took place inside.

Q. Who were these things purchased from?

A. They were purchased from a man, I don't know what his name was.

Q. Did you afterwards learn what his name was?

A. Yes.

Q. What was it? [264]

A. Mr. O'Neil.

Q. And had you ever seen Mr. O'Neil prior to that time, about the first of September?

A. Yes, I had seen him before.

Q. How long before was it?

A. Oh, I don't really remember. He used to come in and buy ice cream quite often.

Q. About how old a man do you think he would be?

A. Well, he seemed kind of middle-aged. I would say about forty or so.

(Testimony of Sylvia Henderson.)

Q. And what was—how big a man was he?

A. Well, he wasn't too tall. He was about medium height.

Q. Did he have any distinguishing characteristics or marks?

A. No, there wasn't anything about his features or anything that I particularly remembered.

Q. How was he dressed?

A. He was dressed, usually dressed in work clothes—overalls.

Q. Do you remember the color of his hair?

A. I think it was kind of brown, if I remember correctly. He was starting to gray along the temples.

Q. Do you remember what time of day it was that he came there?

A. You mean when they bought——

Q. At the time this sale was made.

A. Well, it was sometime late in the evening. I would say between eight and nine o'clock. I don't remember exactly. [265]

Q. When did you first see him that evening, Sylvia?

A. It was when he came in and said he had the range and refrigerator.

Q. And who all was there at the time?

A. There was mother, Mr. Cutting, and myself.

Q. And what was said or done about these things by this Mr. O'Neil and Mr. Cutting and your mother?

A. Well, Mr. O'Neil came in and said he had the range and refrigerator and some other furniture out on his truck, and we went out to look at it.

(Testimony of Sylvia Henderson.)

Q. Did you go out, Sylvia, to look at it?

A. I didn't go out immediately, but afterwards; I went out in a few minutes.

Q. What kind of a truck was it?

A. It was a big truck. I don't recall what make. It was red.

Q. What was on the truck?

A. There was quite a bit of furniture.

Q. Just what did that furniture consist of?

A. Well, there was a range, a refrigerator, a washing machine, and there was some beds, and I think there was a daveno.

Q. Did you look at these things on the truck, Sylvia?

A. Well, I wasn't really interested in the range and refrigerator or washing machine, but he had some dishes and stuff that I was more interested in, so I paid most of my attention to them. [266]

Q. When did you first see the dishes?

A. Well, he said he had some dishes, and I went to see what they looked like, so I got on the truck and looked at them.

Q. You got on the truck? A. Yes.

Q. How long did you remain on the truck?

A. How long was I——

Q. How long did you stay on the truck?

A. I don't really remember. It wasn't very long.

Q. Then where did you go?

A. We went—I went back into the ice cream company.

Q. Into the office in the front? A. Yes.

(Testimony of Sylvia Henderson.)

Q. And do you know how much Mr. Cutting paid for those—or, do you know what he bought, Mr. Cutting bought?

A. Well, he bought the range, the refrigerator, and the washing machine, and these dishes and pots and pans.

Q. How much was paid for those, Sylvia?

A. Well, I heard since it was \$300.00. I knew he paid something, but I don't remember from then.

Q. Do you know how that was paid?

A. It was paid in cash, in bills.

Q. And who gave Mr. O'Neil the cash?

A. Mr. Cutting.

Q. Did Mr. Cutting give it all to him? [267]

A. Well, he didn't have it all. He had some of the money, and then he had to borrow some more from my mother.

Q. Do you know how much he borrowed from your mother? A. No, I don't.

Q. Could you state whether or not that Mr. O'Neil gave Mr. Cutting a bill of sale for it?

A. Yes, he did.

Q. Who prepared this bill of sale?

A. My mother typed it.

Q. And did you see Mr. O'Neil sign the bill of sale? A. Yes.

Q. And what did he sign it with?

A. Well, there was a pen and pencil desk set, and I don't remember which one he used.

(Testimony of Sylvia Henderson.)

Q. And did you ever see Mr. O'Neil after that evening? A. No.

Q. Did he make any remarks at the time this sale was taking place as to what he was going to do, where he was going?

A. He said something about going to Anchorage.

Q. Have you ever seen him in Anchorage?

A. No.

Q. Now Sylvia, that stuff that was purchased by Mr. Cutting, what was done with that? Was that unloaded there?

A. Well, the refrigerator was unloaded there in the back part of the ice cream company, and the washing machine and range was [268] taken and stored with the Schmidts.

Q. What kind of a range was that, Sylvia?

A. You mean the——

Q. (Interposing): The range that was purchased that night, what did it look like?

A. Well, it was kind of an old-looking range. It was kind of raised on one side, and it was quite high off the floor of the truck, and it had quite high legs.

Q. I didn't quite catch your answer as to its being raised on one side.

A. The oven was on the top of the stove. It wasn't flat as most of the ranges are.

Q. Just talk slow, Sylvia, so the jury can hear and the court reporter. I didn't get that answer this last time.

A. The oven, instead of being down inside the stove, it was up, raised.

(Testimony of Sylvia Henderson.)

Q. Would you turn around and take a look at that stove over there and state whether or not that was the range that was bought that evening?

A. No, that isn't the range.

Q. Now, you stated that this range that you bought was taken down and put some place else?

A. At Mrs. Schmidt's home where she lived.

Q. And did you go down there at the time they put it there? A. No. [269]

Q. Did you see that range down there later, Sylvia? A. Yes.

Q. How much later?

A. Well, I remember seeing Mrs. Schmidt quite frequently. It was on one of the visits a short time after that that I saw it.

Q. Where was the range at the time you seen it down there?

A. Why, it was in the storage room on the ground floor.

Q. What kind of a room?

A. Well, it was—they stored stuff in there.

Q. And you saw this range in this storage room?

A. Yes.

Q. Is that in the same building that the Veterans of Foreign Wars were occupying at that time?

A. Yes. They had the front half of the building. They stored stuff down there, and Mr. Cutting had a lot of his things, trunks and suitcases, stored down there.

Q. Did you go into that storage room at the time you went down there?

(Testimony of Sylvia Henderson.)

A. No, I didn't. I just happened to be going by, and the door was open, and I happened to glance in and saw it there.

Q. And the range was stored down there, was that the same in appearance as the one that Mr. Cutting had bought from Mr. O'Neil?

A. Yes.

Q. Now, how long after was it before you went to Anchorage, Sylvia? [270]

A. We went to Anchorage in November?

Q. And you have been living in Anchorage since?

A. Yes.

Q. Where did you reside after you moved to Anchorage, Sylvia?

A. When we first went there, we lived in the Anchorage Hotel, and then my mother and Mr. Cutting bought a house.

Q. Where was that house located?

A. The address was 733 Fifth Avenue.

Q. And that is near the N. C. Company?

A. Yes, it was right behind the N. C. Company. It is next to their apartments.

Q. Calling your attention to some time in December, was you in that house when Mr. Norton and Mr. Baskin came in the home? A. Yes.

Q. About what time did they get there, Sylvia?

A. Oh, I know it was sometime late in the evening. I would say about eight o'clock—something like that.

Q. And what was their purpose in coming there? Do you know why they came there?

(Testimony of Sylvia Henderson.)

A. Well, I didn't find out until afterwards. I overheard—from a conversation, I gathered they were looking for some stolen range and refrigerator.

Mr. Taylor: Should we recess now?

The Court: Yes. We are going to recess in a few minutes. Remember the general admonitions of the Court, ladies [271] and gentlemen of the jury. Do not talk about the case and do not permit anyone to talk to you about it or about it in your presence until the case is finally submitted to you.

(Court was at recess until two o'clock p.m., November 14, 1946, at which time it was duly reconvened. All members of the jury were present.)

The Court: Are counsel ready to proceed with the trial of this case?

Mr. Arend: Yes, your Honor.

Mr. Taylor: Yes, your Honor.

(Sylvia Henderson was recalled to the witness stand.)

Mr. Taylor. You may take the witness, Mr. Arend.

Cross-Examination

By Mr. Arend:

Q. How long have you lived in Fairbanks, Sylvia? A. About a year.

Q. About a year. Will you describe to the jury the electric range that your family bought from Mr. O'Neil?

(Testimony of Sylvia Henderson.)

A. Well, it was an old-time range. It had an up-raised oven. It wasn't flat on the top, and it had four legs. It was up, oh—it was quite high—it was rather high.

Q. What make was it?

A. I think it was Westinghouse.

Q. You think it was? [272]

A. I am not positive.

Q. Are you positive that Mr. O'Neil was turning gray around the temples?

A. I am quite sure.

Q. You are quite sure of that. By what names have you known Mr. Cutting?

A. Just as Mr. Cutting.

Q. What first name?

A. Well, it is Percival, but they call him "Sandy."

Q. Have you also known him as Percy J. Cutting?

A. Yes.

Q. As Percy James Cutting?

A. Yes.

Q. Have you ever known him as P. J. Cutting?

A. Yes.

Q. To your knowledge has he ever lived in California?

A. Yes.

Q. Was he living there in 1939?

A. I don't know.

Q. You don't know when he was living there?

A. Well, I don't know the exact years. I just know that he has resided in California.

Q. Did he come from California to Alaska?

A. I don't know that either.

(Testimony of Sylvia Henderson.)

Q. Oh, you don't know that. Has he resided in any other state [273] than California?

A. Well, the only one that I know is Vermont.

Q. Vermont. That is where he was born?

A. Yes.

Q. Do you know how long it is since he has resided in Vermont?

A. No. I imagine it is quite awhile.

Q. Do you know how long he has been in Alaska?

A. I think it is about five years.

Q. About five years. Did he ever live in Oakland, California, to your knowledge?

A. Well, I don't know. I heard him mention it quite a bit, but I don't know if he ever lived there.

Q. Now, Sylvia, it is perfectly all right for a witness to discuss a case like this with anyone except the members of the jury. With that in mind, have you discussed this case with anyone?

A. With the lawyers.

Q. Have you discussed it with your mother?

A. Yes.

Q. You know that your mother was on the witness stand this morning, do you? A. Yes.

Q. After she took the witness stand and there was a recess and she came outside, did you discuss the case with her then?

A. Yes. She said something to me. I really don't remember what [274] she said. I don't believe it was about the case, though.

Q. Did you talk to her about Mr. O'Neil?

A. No.

(Testimony of Sylvia Henderson.)

Q. Have you ever talked to her about him?

A. She just asked me if I remembered what he looked like.

Q. When did she ask you that?

A. It was a couple of weeks ago, when I first knew I was going to be a witness.

Q. Did she tell you what she remembered that he looked like? A. No. She just asked me.

Mr. Arend: No further questions.

Mr. Taylor: That is all, Sylvia.

(Witness excused.) [275]

CARL L. BLAKESLEY

called as a witness on behalf of the defendant, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. Carl L. Blakesley.

Q. Where do you reside, Mr. Blakesley?

A. In Anchorage.

Q. How long have you lived there?

A. Just about two weeks.

Q. Prior to then, where did you live?

A. At Hope, Alaska.

Q. Have you ever lived in Fairbanks?

A. Yes, sir.

Q. What is your occupation, Mr. Blakesley?

A. Warehouseman.

(Testimony of Carl L. Blakesley.)

Q. Did you ever have a job or position such as that here at Ladd Field? A. Yes, sir.

Q. Or Satellite Field? A. Yes, sir.

Q. At both of them? A. Yes, sir. [276]

Q. Just what did your duties consist of, Mr. Blakesley?

A. At Ladd Field I was superintendent of warehousing there for the Engineers.

Q. And did your duties have anything to do with the keeping of the records?

A. At one time, they did, yes, sir.

Q. About what time was that?

A. Up to the time the Resident Engineers and the Post Engineers consolidated.

Q. And do you remember approximately when that occurred?

A. About the—around about the first of December, 1944.

Q. And then did that arrangement stay in effect for the rest of the time you worked out there?

A. Yes, sir.

Q. Mr. Blakesley, did you retain the same position? Did you have the same position, though, after that?

A. Yes, sir. That is when I was made superintendent there at that time.

Q. Now, at the time that you was out there, did you have either the stoves, the ranges and the refrigerators in your records, inventory records?

A. Yes, sir.

(Testimony of Carl L. Blakesley.)

Q. And were they turned over to the Post Engineers office later? A. Yes, sir.

Q. What was the condition of those records at the time that you [277] turned them over, Mr. Blakesley?

A. Well, they—at the time they were turned over to the administrative offices of the Post Engineers, they were all accounted for and in good shape.

Q. Now, were the refrigerators and ranges out there, were they property of the United States?

A. Yes, sir.

Q. They were on the list of stuff that was supposed to be accounted for? A. Yes, sir.

Q. Do you remember of any stoves or ranges or refrigerators that was charged out to Satellite Field?

A. I know of one stove and one refrigerator that I personally remember of.

Q. Can you state whether or not that that was ever returned to Ladd Field or not?

A. So far as I know——

Mr. Arend (Interposing): We object to that, your Honor. He has said there are records, and the records would be the best evidence.

Mr. Taylor: I asked him if to his knowledge they had been returned.

The Court: The objection will be sustained.

Q. (By Mr. Taylor): Now, in putting out these stoves, ranges and stuff, were any of those allocated to individuals such as [278] officers or civilian workers at the base?

(Testimony of Carl L. Blakesley.)

A. They were to the officers.

Q. How was that record kept?

A. It would be on a memorandum receipt.

Q. And when the officers would leave or be transferred, would they return the ranges or refrigerators?

A. They would have to call at my office for them to be returned, and then we would go over and get it, or else order some other officer to take it over. The officer who had it would get a credit for it, and we would assign it over to the new officer, or else the property would be returned to the warehouse.

Q. Now, were you in charge of the warehouses out there at the time that Satellite Field was closed? A. Yes, sir.

Q. And did you receive the equipment and material that was returned from Satellite Field to Ladd Field? A. I did.

Q. And what was done with that material as it came back in, Mr. Blakesley?

A. The trucks generally came up to my main warehouse there where my office was, and I would assign it. I would look the trucks over and see what the material was and assign it to the different warehouses.

Q. And do you know whether or not a record was made of that stuff as it came back in? [279]

A. The material was sent up there, and most of it had a tally-out with it to describe the item that was on the truck, and we put it in our stock there and absorbed it.

(Testimony of Carl L. Blakesley.)

Q. Do you know whether all of the material which had been brought in from Satellite Field was handled that way? A. No, it was not.

Q. How was some of it handled?

A. For the reason that there was a lot of trucks coming up in there, and the men would load the material on the trucks and bring it into Ladd Field without coming in to tell me about it, and they would dump it over in the stock pile somewhere.

Q. And those things there would not be any record of them coming back?

A. No, there wouldn't.

Q. Was there ever any investigation of material that was supposed to have been trucked back to Ladd Field, or, from Satellite Field to Ladd Field, which Mr. Cutting was accountable for? A. Yes, sir.

Q. What was that material?

A. Well, one was a lot of electrical material which at the time the investigator came up there, why, we proved that everything was on the post.

Q. Calling your attention to a certain boiler, was there an investigation made about that? [280]

A. Yes, sir. There was a big steam boiler—I don't know what the estimated weight was, but it was probably about twelve or fifteen feet long; it would take a lowboy to haul it and a crane to load it onto the lowboy—and that was supposed to be missing. There had been none brought on Ladd Field there, and, after we got to hunting around for it, it was found sitting out on the field there, and it was identified as the one missing. That was brought in there without my knowledge.

(Testimony of Carl L. Blakesley.)

Q. That had been brought in there and placed in there without any report on it? A. Yes, sir.

Q. I believe you stated that other equipment and material had also been returned the same way?

A. Yes, sir.

Q. Now, was there any articles, items of various sorts, that would be taken out of the warehouse by officers, or enlisted men, or civilians, without your knowledge? A. It had been done, yes.

Q. Do you know of cases of it being done?

A. I had several warehouses broken into and material gone quite a few times.

Q. And did you find out where it had gone to later? A. No, I didn't.

Q. And do you know where it had gone to, who had taken it? A. Only in one case. [281]

Mr. Arend: We object to that, your Honor, unless it is connected with the defendant.

The Court: Objection sustained.

Q. (By Mr. Taylor): Mr. Blakesley, was there material and equipment that didn't show on the inventory? Was there anything out there that didn't show on the inventory?

Mr. Arend: We object to that unless he makes certain which inventory is meant.

Q. The warehouse inventory.

A. There was lots of items.

Mr. Arend: We object to that as too indefinite.

The Court: It is too indefinite, Mr. Taylor.

Q. It is particularly directed to various items which you kept in the warehouses and which was under your control.

(Testimony of Carl L. Blakesley.)

Mr. Arend: We still object to it, your Honor. There is nothing definite there.

The Court: Objection sustained.

Q. (By Mr. Taylor): Now, do you remember how many stoves and ranges, electric ranges and refrigerators were checked out to Satellite Field?

Mr. Arend: We object to that unless he identifies the type of range first.

The Court: The objection will be overruled.

Mr. Taylor: They brought this up.

The Court: The objection was overruled. [282] Do you remember the question? Answer it "yes" or "no." A. Yes, sir.

Q. How many was there?

Mr. Arend: We object to it, your Honor, unless he shows what kind of ranges.

The Court: I believe he said electric ranges.

Mr. Arend: I think it should be further identified as to the make: whether it was General Electric or Westinghouse.

Mr. Taylor: If the Court please, the government brought this same question up, and they had ranges go out there without any identification marks on them, any numbers. I think we are entitled to show how many were brought out so far as Mr. Blakesley's knowledge is concerned.

The Court: Limit it as to them.

Q. (By Mr. Taylor): During the time that Satellite Field was activated.

A. There was one electric refrigerator and one electric stove of the household type.

(Testimony of Carl L. Blakesley.)

Q. Can you state, to your own knowledge, whether or not that electric range and electric refrigerator, which was charged out to Satellite Field, was returned to Ladd Field? A. It was not.

Q. Your records would indicate that it wasn't returned; is that right? A. Yes, sir. [283]

Q. Where are you working now, Mr. Blakesley?

A. For the Birch, Johnson, and Lytle Company in Anchorage.

Q. What is your occupation there?

A. I am working in the warehouse.

Q. Warehouseman. You are acquainted with Mr. Cutting, are you not, Mr. Blakesley? A. Yes.

Q. How long have you known him?

A. Probably over two years.

Q. And was that acquaintance here at Ladd Field and Satellite Field while you were working here? A. Yes, sir.

Q. And what was his occupation or position at that time?

A. He was post engineer at Satellite Field.

Mr. Taylor: I believe that is all, Mr. Blakesley. You may cross-examine.

Cross-Examination

By Mr. Arend:

Q. Are you familiar with the tally-out sheets that were used at Satellite Field? A. Yes, sir.

Q. That is, that would be used in bringing back property to Ladd Field. A. Yes, sir.

(Testimony of Carl L. Blakesley.)

Q. Are you acquainted with Mr. P. J. Cutting's signature, the defendant's signature?

A. I think so.

Q. I show you Plaintiff's Identification No. 13 and ask you to look at it. It is Plaintiff's Exhibit H. Do you find two ranges listed on there, two electric ranges?

A. No, sir. That is two ranges. The electric is crossed out.

Q. Don't you find that that is merely the line from the reverse side of that paper?

A. It could be, yes, holding it up that way.

Q. Now, appearing on the tally-out sheet signed by Mr. Cutting, is that his signature on there?

A. I wouldn't positively identify it, no, because I haven't seen his writing.

Q. Well, assuming that it is his signature and that it is a tally-out sheet from Satellite Field, do the items listed on there represent government property? Or are they personal property?

Mr. Taylor: If the Court please, I object to the question upon the ground that it calls for a conclusion of the witness.

Mr. Arend: It is cross-examination, your Honor.

The Court: Objection sustained.

Q. (By Mr. Arend): Now, I show you Plaintiff's Exhibit A and ask you to look at it. Is that a type of memorandum receipt that you took for government property issued to military personnel?

A. That is an old type, yes, sir.

(Testimony of Carl L. Blakesley.)

Q. Mr. Blakesley, can you tell the jury the serial number that was on the one range that was at Satellite Field during the time——

A. (Interposing): I can't tell the jury that.

Q. Oh, you can't tell the serial number?

A. There are too many numbers involved there to remember that many.

Q. Can you tell the jury whether or not a Westinghouse electric range, type TH64, serial number 830175, frame style number 1086298, was ever on Satellite Field?

A. Not that particular one, no.

Q. That particular one was never on Satellite Field. How do you know?

A. I said that I couldn't say that.

Q. Oh, you couldn't say that? A. Yes.

Redirect Examination

By Mr. Taylor:

Q. Mr. Blakesley, Mr. Arend has shown you a certain exhibit here that, I think, you identified as a tally-out of Satellite Field. Now, in the ordinary course of procedure, what would be done with that? Who would first get that tally-out sheet at Satellite Field? [286]

A. If the item was going from Ladd Field to Satellite Field, the tally-out was made in my office. There was three copies made of that: one kept in our office and two went to the truck-driver, and as the truck-driver went out the gate, the M.P. picked up the one copy of that, and the other copy went to Satellite Field.

(Testimony of Carl L. Blakesley.)

Q. And, in reverse, if the truck went out of Satellite Field, three copies would be made out; one would be retained——

Mr. Arend (Interposing): We object to counsel giving the evidence. I think the witness should testify.

Q. Just state what was done.

A. That would be the same from Satellite Field to Ladd Field.

Q. And the truck driver would have two copies?

A. Yes, sir.

Q. One to give the M.P.? A. Yes, sir.

Q. And one to bring to Ladd Field when he arrived there? A. Yes, sir.

Q. And in whose possession would that be in from the time he left the gate?

A. Which copy, sir?

Q. The copy that was going to Ladd Field.

Q. Well, the copy that was going to Ladd Field would be turned in with the supplies that he had on the truck.

Q. You mean to say the truck-driver would have that? A. Yes, sir. [287]

Mr. Taylor: I believe that is all, Mr. Blakesley.

Recross-Examination

By Mr. Arend:

Q. Who would get the original of those three copies?

A. The original was kept in my office.

(Testimony of Carl L. Blakesley.)

Q. No, I mean coming from Satellite Field, who would get the original? A. The M.P.

Q. The M.P.?

A. Yes, sir, the M.P. As the truck went through the gate, the M.P. would get the first copy.

Mr. Arend: I have no more questions.

Further Redirect Examination

By Mr. Taylor:

Q. Mr. Blakesley, do you know in what building at Satellite Field that the range, electric range and the electric refrigerator were in?

A. The electric refrigerator and electric range I sent down from Ladd Field to Satellite Field went to the dispensary.

Q. Mr. Blakesley, could you state whether or not, at the time that Mr. Cutting was terminated at Satellite Field, that his property list was cleared?

A. It was. [288]

Q. And it showed that he had no property of the government? A. Yes, sir.

Mr. Taylor. That is all, Mr. Blakesley.

Mr. Arend: That is all.

(Witness excused.) [289]

GEORGE NEHRBAS

called as a witness on behalf of the defendant, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. George Nehrbas.

Q. Where do you reside, Mr. Nehrbas?

A. Fairbanks.

Q. And what business or occupation do you follow?

A. I have the Fairbanks U-Drive.

Q. How long have you been in that business, Mr. Nehrbas?

A. Since 1939.

Q. And what type of business is that?

A. Renting of automobiles.

Q. Of various sorts?

A. Yes.

Q. Trucks, sedans, and so forth. I suppose over the years you have rented quite a number of cars, Mr. Nehrbas?

A. Yes.

Q. And had a great many customers. Mr. Nehrbas, do you ever remember of renting a car to a man named M. W. O'Neil?

A. I don't remember the man.

Q. Now, in renting a car, do you have any record of the rental of that car?

A. Yes. [290]

(Testimony of George Nehrbas.)

Q. How is that record kept, Mr. Nehrbas?

A. We have a rental contract book that the customer, the renter, signs. We make it out and he signs it. It is a contract agreement. We keep one copy in the book; he gets the other copy.

Q. Which copy do you keep, Mr. Nehrbas?

A. In the older books, we keep the carbon copy. In the newer books, the later books, we keep the original copy.

Q. Is that a permanent record, then, of the transactions you have in——

A. Yes.

Q. ——regard to the rental of cars?

A. Yes.

Q. Who kept those books?

A. I kept those books.

Q. Now, Mr. Nehrbas, would you take a look at this book and state what that is?

A. That is one of older type rental books, which we had in effect from 1941 until 1945.

Mr. Taylor: I would like to have that marked for identification.

(Rental contract book of the Fairbanks U-Drive was marked by the clerk of the court as Defendant's Identification C, and the page hereinafter referred to is in words and figures as follows:) [291]

(Testimony of George Nehrbas.)

"Rates for Fairbanks-U-Drive

"East 329

411 Second

\$20.00 Deposit Required

(Forfeitable on Breach of This Contract)

Short Rental Rates		Daily Rental Rates	
Includes Gas and Oil		Customer Furnishes Own Gas and Oil	
"Older Cars,	} Minimum	.07½ per	} 100 mile minimum
.15 per mile		mile	
Good Cars,	} 4 miles	.10 per	} per 24-hr.
.20 per mile	} per hour	mile	} day

Service Charges, \$0.75 minimum. \$1.50 per 24-hr. day

Date, July 5 Name..... Address.....

"Make of Car, 25 Ford	Model of Car, Brown
Time In.....	Mileage In 53
Time Out.....	Mileage Out 65518
Time Used.....	Mileage Driven 35
Rate at.....	5

110

2

Amount of Rental.....

8.00

Damages

Service Charges, 5 mi. on 35

3.00

Misc. Charges

Pd

Total

\$11.00

"The undersigned lessee agrees, guarantees and warrants as follows: [292]

(Testimony of George Nehrbas.)

“1. That lessee has examined said automobile and that it is in good and serviceable condition, and that he will hold lessor harmless from all claims arising out of latent defects therein. That immediately upon driving the car, if there is no objection to the condition of the car, it will be presumed by the lessor that the car is entirely satisfactory to lessee.

“2. That lessee will return the automobile in the same condition as when received and will pay for any damage done to said automobile while in his possession. The lessee further agrees to hold and save the lessor harmless and free from all claims arising out of injuries to persons or damages to property caused by the lessee during the time lessee has said automobile out of lessor's possession.

“3. That lessee will retain sole and exclusive possession of car and allow no one else to operate it and will observe and obey all Federal, Territorial and Municipal laws while said automobile is in his possession. That said automobile will not be used to carry passengers or goods for hire.

“4. The lessee agrees not to change or alter any part of the automobile rented, or any accessory, instrument or part attached thereto, in any way whatsoever, except for necessary repairs while en route, and at lessee's own expense.

(Testimony of George Nehrbas.)

“5. That lessee is responsible for all towing and wrecking fees except when due to defects in mechanism. [293]

“6. That I am 21 years of age, and am a capable, competent driver and will not at any time operate this vehicle while under the influence or effect of liquor.

“7. That the undersigned has read and received a copy of this contract.

“Lessor:

Fairbanks-U-Drive	/s/ “M. W. O’Neil
By.....”	“(Lessee)”

Q. (By Mr. Taylor): Now, Mr. Nehrbas, will you open that book at the place where the little marker is and state what that is?

A. That was a car that was rented to M. W. O’Neil on July 5. It was a ’35 Ford Sedan. It was a——

The Court: What year?

A. The rental——

The Court: What year?

The Witness: Was it rented?

The Court: Yes.

The Witness: 1941.

Q. (By Mr. Taylor): Was that signed by Mr. O’Neil? A. Yes. It is made out by myself.

(Testimony of George Nehrbas.)

Mr. Taylor: We would like to offer this in evidence.

Mr. Arend: We would like to know for what purpose it is being offered.

Mr. Taylor: It is offered for the purpose of confirming [294] the handwriting on the slips with the handwriting on the bill of sale given.

Mr. Arend: As I see it, your Honor, there is no identity established between this M. W. O'Neil and the signature that we have on one of the papers here in this case, the bill of sale, and I believe it is a little too remote for any purpose. They probably have something more recent.

The Court: Objection overruled.

Q. (By Mr. Taylor): Would you please state what that is, Mr. Nehrbas?

A. This is another car that was rented to the same M. W. O'Neil on September 23 the same year; that is a '41 Ford.

Q. Is that signed by Mr. O'Neil?

A. Yes, sir, the same signature.

Mr. Taylor: I would like to have that marked for identification.

(Thereupon a rental contract book of the Fairbanks-U-Drive was marked by the clerk of the court as Defendant's Identification C, and the page referred to in this proceeding is, in words and figures, as follows:)

(Testimony of George Nehrbas.)

“RATES FOR FAIRBANKS-U-DRIVE

“East 329

411 Second

\$20.00 Deposit Required

(Forfeitable on Breach of This Contract)

Cash

“Short Rental Rates		Daily Rental Rates	
Includes Gas and Oil		Customer Furnished Own Gas and Oil	
“Older Cars,	} Minimum	.07½ per	} 100 mile
.15 per mile		mile	
	4 miles		per 24-hr.
Good Cars,	} per hour	.10 per	} day
.20 per mile		mile	

Service Charges, \$0.75 minimum \$1.50 per 24-hr. day

Date, Sept. 23. Name..... Address.....

“Make of Car, 41 Ford	Model of Car, Coupe	
Time In.....	Mileage In	84
Time Out.....	Mileage Out	6278
Time Used.....		<hr/>
Rate at..... Pd	Mileage Driven	6
Amount of Rental.....2.50		
Damages.....		
Service Charges.....		
Misc. Charges.....		
Total.....		

“The undersigned lessee agrees, guarantees and warrants as follows:

“1. That lessee has examined said automobile and that it is in good and serviceable condition, and that he will hold lessor harmless from all claims

(Testimony of George Nehrbas.)

arising out of latent defects therein. That immediately upon driving the car, if there is no objection to the condition of the car, it will be presumed by the lessor that the car is entirely satisfactory to lessee.

"2. That lessee will return the automobile in the same condition as when received and will pay for any damage done to said automobile while in his possession. The lessee further agrees to hold and save the lessor harmless and free from all claims arising out of injuries to persons or damages to property caused by the lessee during the time lessee has said automobile out of lessor's possession.

"3. That lessee will retain sole and exclusive possession of car and allow no one else to operate it and will observe and obey all Federal, Territorial and Municipal laws while said automobile is in his possession. That said automobile will not be used to carry passengers or goods for hire.

"4. The lessee agrees not to change or alter any part of the automobile rented, or any accessory, instrument or part attached thereto, in any way whatsoever, except for necessary repairs while en route, and at lessee's own expense.

"5. That lessee is responsible for all towing and wrecking fees except when due to defects in mechanism.

"6. That I am 21 years of age, and am a capable, competent driver and will not at any time operate this vehicle while under the influence or effect of liquor.

(Testimony of George Nehrbas.)

“7. That the undersigned has read and received a copy of this contract. [297]

“Lessor:

Fairbanks-U-Drive /s/ “M. W. O’Neil
By” “(Lessee)”

Q. (By Mr. Taylor): Now, referring to this, can you state the date that that rental was made?

A. That was on July 5.

Q. And what type of car was it?

A. ’35 Ford Sedan.

Q. And that was signed by Mr. O’Neil, was it?

A. Yes.

Q. And then calling your attention to the slip that is marked in that, could you state what that is—date, that is. A. September 23.

The Court: Of what year?

The Witness: ’41. ’41 Ford Coupe at the same rental.

Mr. Taylor: I believe that is all now, Mr. Nehrbas.

Cross-Examination

By Mr. Arend:

Q. Mr. Nehrbas, can you describe Mr. O’Neil to us?

A. I cannot. I don’t remember him.

Q. You don’t remember him? A. No.

Q. You haven’t seen him since 1941?

A. I wouldn’t know him if I saw him. [298]

Q. Did he sign them in your presence?

(Testimony of George Nehrbas.)

A. Whoever signed the name O'Neil signed them in my presence, but I don't remember O'Neil. It is too long ago. I never knew him personally.

Q. Did he ever get a car since September, 1941?

A. That also I would be unable to say, but I rather doubt it.

Q. Did you go through your records?

A. I didn't go through them all. I believe another party did.

Mr. Arend: That is all.

(Witness excused.) [299]

HARRY O. AREND

called as a witness on behalf of the defendant, having been previously sworn, was further examined and testified as follows:

Direct Examination

By Mr. McCutcheon:

Q. Mr. Arend, in your experience as United States Attorney, you have undoubtedly had occasion many times to compare signatures. You have had some experience in that, have you?

A. I am no signature expert. I usually go to someone else to get comparisons made for me.

Q. I hand you that bill of sale, Defendant's Exhibit No. 1. Will you compare the signatures on the bill of sale with the carbon copy of the record?

A. Yes.

Q. Would you say that that is the same signature?
A. I couldn't say.

(Testimony of Harry O. Arend.)

Q. Does it look like the same signature? Take all the time you want. I am not trying to hurry you.

A. Well, the "N" in O'Neil in—on these two identifications—in one of them it appears to have been printed; in the other it appears to have been written in a flowing hand.

Q. Would you say—

A. Wait a minute. I am not through yet.

Q. Go ahead. [300]

A. On the bill of sale it appears that the man made an "M" for the "N"; in other words, there are three distinct strokes on the "M" which should have ordinarily been an "N," as it is O'Neil. There are some similarities, however, and there are also differences. The "O" is entirely different on the bill of sale.

Q. Is it entirely different? Did you say "entirely different"?

A. Yes, I will say that, because the "O" on the identifications is made in the form of a circle, with the last part of the up stroke ending inside of the beginning down stroke, but fairly close to it. On the bill of sale, the "O" commences in the center of the circle, goes up and around, and comes back into the center of the circle again, which gives a loop in the middle of the "O." Now, that is a distinction to me.

Q. Would you say that the signatures look similar?

A. I wouldn't say so.

Q. You would say they didn't look similar?

A. To me they do not.

(Testimony of Harry O. Arend.)

Mr. McCutcheon: Very well. That is all, unless there is some cross-examination.

The Witness: I realize that there is about five years difference—four years, at any rate.

Mr. Berrett: No cross-examination.

(Witness excused.) [301]

STANLEY D. BASKIN

called as a witness on behalf of the defendant, having been previously sworn, was further examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Now Mr. Baskin, I suppose in your training as an F.B.I. man that you have studied handwritings to a certain extent?

A. Well, I never received any special instruction on it.

Q. I suppose that there are many times that you have been called upon to compare handwritings for similarities and general appearances?

A. Yes, I have been called on, but just to express my personal opinion.

Q. Mr. Baskin, I hand you Defendant's Exhibit No. 1 and also Defendant's Identification C and ask you to compare the signature of William N. O'Neil appearing on there with the signature of William W. O'Neil, or, M. W. O'Neil, appearing on the bill of sale, and state whether, in your opin-

(Testimony of Stanley D. Baskin.)

ion, there is a similarity between those signatures. It may be you want a little better light. If you do, you may get under another light.

A. No, this is all right. Yes, there are features of those letters that are similar.

Q. Now, compare the bill of sale with Defendant's Identification [302] B that bear the signature of M. W. O'Neil appearing there with M. W. O'Neil which appears on Defendant's Exhibit 1.

A. There are certain features of it that are similar, but the O'Neil in this Exhibit 3—

Q. That is Identification B, I believe it is.

A. —is spelled with an apostrophe—O'Neil—and the others are not spelled with an apostrophe. The "W" is considerably different from the "W" in Identification No. 1—is that it?

Q. Yes.

The Court: I believe it is Exhibit 1.

Q. How about the general appearance, though, of that signature, Mr. Baskin?

A. The general appearance is similar.

Q. And in your opinion they might have been written by the same hand?

A. They could have been written by the same hand.

Mr. Taylor: If the Court please, at this time I would like to offer the two exhibits B and C as exhibits in this case.

Mr. Arend: We object to their admission.

The Court: Objection overruled. They may be admitted.

(Testimony of Stanley D. Baskin.)

(Thereupon Defendant's Identifications B and C were marked by the clerk of the court as Defendant's Exhibits No. 2 and 3, respectively.)

Mr. Taylor: That is all, Mr. Baskin. [303]

Cross-Examination

By Mr. Arend:

Q. I want you to examine again Defendant's Exhibit No. 1 and what has been marked here on the front "Identification C," now Exhibit 3, in regard to this one question I think that was asked you by counsel as to whether there were any similarities. Now, I want to ask you about these two signatures, purporting to be those of O'Neil; if you note any dissimilarities, will you state what they are? A. I do.

Q. State what they are in Exhibit 1.

A. In Exhibit 1, the "M" is written very much like a "W" with a loop in the beginning; it comes down to almost the bottom of the "M", and in Exhibit—what is this: "C"?

Q. No. 3.

A. And in No. 3, the loop in the "M" is high at the top of the "M." The "W" in Exhibit 3 is sharp at the bottom and at the center, whereas the "W" in Exhibit 1 is—the "W" is round at the bottom. In Exhibit 3 there is an apostrophe between the "O" and the "N"; in Exhibit 1, there is no apostrophe; and in Exhibit 3 the first "e"

(Testimony of Stanley D. Baskin.)

appears to be dotted; that is, the letter which appears to be "e" appears to be dotted, and in Exhibit 1 what appears to be spelled N-e-i-l, with the "i" being the third letter of it, the dot is over the third letter in the word "Neil." [304]

Q. Compare the letter "O" in the word "O'Neil" in the two documents.

A. There is considerable difference between the "O"; in Exhibit 3 it is particularly round, but in the "O" in Exhibit 1, it is round, but it has a loop in the center.

Q. Do you believe, Mr. Baskin, that these two documents were signed by the same individual?

A. Well, I couldn't say they were signed by the same individual. I would say they could be, but I wouldn't say they were signed by the same individual.

Mr. Arend: That is all.

Mr. Taylor: That is all, Mr. Baskin. I would like to show the jury the comparison of these signatures.

(The above-mentioned exhibits were shown to the jury.)

The Court: We will take a recess for ten minutes.

(A ten minute recess was taken, after which court was duly reconvened. All members of the jury were present.)

The Court: Call your next witness.

Mr. Arend: Defendant rests, your Honor. [305]

EMMA JACQUELINE GRUENEICH

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

The Court: I suggest, first, that the jury refrain now from taking up any more time with those exhibits. They will take quite a bit of time, and, when you get to the jury room, you will have time to examine them more carefully.

Q. State your own full name, please.

A. My name is Emma Jacqueline Grueneich.

Q. How long have you lived in Fairbanks, *Mr.* Grueneich?

A. Since July of 1942.

Q. Where were you living on the 1st of October, 1945?

A. We were living in the building formerly known as the Moose Hall.

Q. Did you own the building? A. Yes.

Q. Are you acquainted with Mrs. Percy James Cutting? A. Yes.

Q. Do you know Mr. Percy James Cutting, the defendant here? A. Yes.

Q. Did you have a conversation with Mrs. Cutting in your apartment on October 1st, 1945, relative to an electric range and refrigerator? [306]

A. Yes, I did. I wouldn't say it was on October 1; it was sometime during October. To say the exact date, I am inclined to believe that it was possibly nearer the latter part of October.

(Testimony of Emma Jacqueline Grueneich.)

Q. Is it the only conversation you had with her regarding an electric range or refrigerator?

A. Yes.

Q. What was said in the conversation?

A. Mrs.—she was Mrs. Henderson at the time she came to see me; that was prior to the time that she and Mr.—well, just a minute, now. Am I correct on that? No, I think that was shortly after she and Mr. Cutting were married. She was Mrs. Henderson at the time we bought the building. She was renting the space for the Mt. McKinley Ice Cream Company, and just a few days after we purchased the building she placed her business on sale.

Mr. Taylor: We object to that, your Honor, as not responsive.

The Court: Objection sustained.

Q. Will you just answer the question and just confine yourself to the question?

A. Yes. What was the question?

Mr. Arend: Will you please read the question?

(The question was read by the reporter:

What was said in the conversation?) [307]

A. Mrs. Cutting came to my apartment, and she asked me—during that time we were constructing apartments, and how the subject came up, she asked me if we were having difficulty in getting electric stoves and refrigerators, and I told her that those things were always, at that time, hard to get, but we had been promised some; and she

(Testimony of Emma Jacqueline Grueneich.)

said, "How would you like to buy a Westinghouse stove and refrigerator?" Well, I spoke up, and I said, "Well, what would you want for them?" So she said, "What will you give me for them?" And so I explained to her then that I would have to see the merchandise involved and know something about how long it had been in use and when it was purchased, and so forth, before I could tell her how much I would pay her for it; and the conversation ended there, and it wasn't brought up again. I didn't make any effort to see her, and she didn't come to see me in regards to the matter after that.

Q. Did you ever see the range or refrigerator that you two were talking about?

A. No, I didn't. No.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Just about what time was that? Did you say it was shortly after they were married? [308]

A. I would say it was shortly after they were married, Mr. Taylor. It was sometime after they were married. It was prior to the time that Murton bought the business out she happened to see me. To begin with——

Q. No. I just wanted you to place the time.

A. That is what I am trying to establish, the time. I can't say exactly what time it was.

Q. It was sometime after their marriage, though?

(Testimony of Emma Jacqueline Grueneich.)

A. It was sometime, I would say, between the middle and latter part of October.

Mr. Taylor: I believe that is all, Mrs. Grueneich.

Mr. Arend: That is all.

(Witness excused.) [309]

STANLEY D. BASKIN

called as a witness on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Mr. Baskin, you have testified at this trial that you and Mr. Norton made a search of the Cutting home in Anchorage in December, 1945. Did Mr. Cutting at any time object to your making such a search?

Mr. Taylor: If the Court please, I object upon the ground that the witness never testified that he made a search of the Cutting Home in Anchorage.

The Court: Objection overruled.

Mr. Taylor: And it is improper redirect examination. It is not proper rebuttal.

The Court: Objection overruled.

A. He never made any objection to the search. I asked him if he had any objection to my searching his residence, or home, and he said he didn't. He said, "To satisfy yourself, you may."

Mr. McCutcheon: We object to it as not responsive.

(Testimony of Stanley D. Baskin.)

The Court: Objection sustained.

Q. (By Mr. Arend): Did Mrs. Cutting ever make an objection to your making that search?

A. She never made any objection to searching her home.

Q. In what division of Alaska is Ladd Field situated? [310]

A. It is the Fourth Judicial Division.

Q. And in what Division of Alaska is Satellite Field located, approximately twenty-six miles from the Town of Fairbanks?

A. In the Fourth Judicial Division.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.) [311]

HUGH C. NORTON

called as a witness on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Mr. Norton, you have testified at this trial that during December, 1945, you and Mr. Baskin made a search of the Cutting home at Anchorage, Alaska. Did Mr. Cutting, at any time, object to your making such a search?

Mr. Taylor: We object to the question. It is just a repetition of a question that was put to the

(Testimony of Hugh C. Norton.)

witness on direct examination. He has already testified to the same matter.

The Court: Objection overruled.

A. No, he did not object.

Q. Did Mrs. Cutting make any such objection?

A. No. She requested me to make the search after Mr. Cutting had said it was all right.

Q. When you were interviewing Mr. and Mrs. Cutting at your office on December 19, 1945, at Anchorage, Alaska, did you there tell her to go home and get a bill of sale? A. No.

Q. Was there any conversation regarding a bill of sale at that interview between you and Mrs. Cutting? A. Yes, sir. [312]

Q. What was that?

A. Well, in questioning her concerning this stove and refrigerator, this stove, Mrs. Cutting said that she had a paper purporting to be a bill of sale, and I asked her if she had it with her, and she said no, she did not; she had it at home, and if I would like she would go home and get it, and I said, "Yes, I would like to see it and see what is on the bill of sale."

Q. You also testified that another F.B.I. agent, Mr. Wright, was present during the interview at your office on the 19th of December, 1945?

A. Yes, sir.

Q. Did he remain there during the entire interview? A. Yes, sir.

Q. Who conducted the interview: You or Mr. Wright?

A. I did. One thing, I think Mr. Wright went out for probably half a minute to get some matches. As I recall, he just stepped out and stepped back.

Mr. Arend: You may cross-examine.

Mr. Taylor: No questions.

Mr. Arend: That is all, Mr. Norton.

(Witness excused.) [313]

ANDREW JACKSON HALL

called as a witness on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Mr. Hall, did you have a conversation with Mrs. Audrey Henderson Cutting in the Model Cafe, during the noon hour, on the 24th day of December, 1945?

A. I did have a conversation. I don't know exactly—I don't remember exactly that date. I am not sure it was that particular date, but I had lunch with her there and a conversation, yes.

Q. Is that the only time you had lunch with her at the Model?

A. Yes, only once at the Model, I believe.

Q. Who else was present?

A. Oh, there was no one. No one else was present except she and I, I believe at this particular time. I mean, she was the only one with me, and I was the only one with her, yes.

Mr. McCutcheon: We object to any further testimony unless they fix the date, your Honor.

(Testimony of Andrew Jackson Hall.)

The Court: Fix a date.

Q. (By Mr. Arend): Can you fix it with respect to Christmas of '45, 1945?

A. Well, I remember it was on the 23rd, I believe—on the 23rd I believe—just before Christmas, or about two or [314] three days before Christmas I met her at the Nordale Hotel. She called me up when she came in on the plane and asked me to——

Mr. McCutcheon: (Interposing) We object to that as not responsive to any question, your Honor.

Q. Yes, just try to fix the date, if you can, from the 23rd.

A. And the date was made for the following day, which was, the best I remember, the day before Christmas, which would be the 24th, and I was to meet her at the Model Cafe at noon on that day, which I did.

Mr. McCutcheon: Just a minute. Are you going to ask a question or let him talk here the rest of the afternoon?

Mr. Arend: Well, he was still fixing the time.

Q. (By Mr. Arend): Now, what was said in that conversation?

A. Well, first she brought up the subject of some plyboard and celotex that she had asked Chuck Cors about, asked Chuck Cors if he would, could, give her a bill of sale for any plyboard or celotex that went into the apartment up there, and she told me that he told her that he couldn't do her any good on it; he didn't have any celotex or playboard

(Testimony of Andrew Jackson Hall.)

for sale and never had sold any and thereby couldn't give her any bill of sale for any plyboard that might have gone into that——

Mr. McCutcheon: Just a moment, is this part of the conversation you had with Mrs. Cutting? I would like to get this straight. [315]

A. Yes, this is the conversation that was going on. She was doing the talking at this time about the plyboard and material and celotex, and then she asked me if, she told me to, if any questions was asked me in regards to where they got the stove and refrigerator, just reply that I didn't know, and, well, I don't particularly remember any other incident, except she told me then, as I was fixing to leave, that just to remember if they got into any trouble about it, we would all go down together. In other words, she meant that——

Mr. Taylor (Interposing): We object to anything further on that as to what she meant.

The Court: Objection sustained. Tell what she said.

A. She said that we would all go down together; that we were all involved in the stove and refrigerator.

Q. Mr. Hall, have you, or, did you, during 1945, at any time, observe Mr. Cutting exert himself unduly physically other than in lifting the range that you testified to yesterday?

Mr. McCutcheon: Objected to as improper rebuttal, your Honor.

The Court: Objection overruled.

(Testimony of Andrew Jackson Hall.)

A. Well, on a number of instances, I have seen him tussling or wrestling with some of the boys there: Chuck Cors, I believe was one; Red Harvey, who was out there. I don't remember any other particular incident. I don't believe I remember any outstanding, anything outstanding about it. [316]

Mr. Arend: You may cross-examine.

Mr. Taylor: No questions.

Mr. Arend: That is all, Mr. Hall.

Mr. Arend: The government rests now, your Honor.

Mr. Taylor: Defendant rests.

The Court: How much time do you want to argue this case to the side? How much time does the defendant want?

Mr. Taylor: I believe we should have an hour, your Honor.

The Court: Is that satisfactory?

Mr. Arend: That is, yes, sir.

Mr. Taylor: That is satisfactory.

(Whereupon counsel for each party argued the case before the jury and the Court duly instructed them, no objections or exceptions being taken to the instructions. The clerk of court thereupon swore the bailiffs pursuant to statute.)

The Court: The jury may retire in the custody of the bailiffs.

(Whereupon the jury retired to consider its verdict. The jury returned its verdict in open court in the presence of defendant and his attorney of record and the district attorney.)

I, Muriel Anderson Lomen, of Fairbanks, Alaska, hereby certify:

That I am the official court reporter in the District Court for the Territory of Alaska, Fourth Division; that I attended the trial of the cause entitled, "United States of America v. Percy James Cutting, Defendant, No. 1268 Cr.," at Fairbanks, Alaska, on November 12, 13 and 14, 1946, and took down in shorthand the testimony given and proceedings had thereat; that I thereafter transcribed said shorthand, and the foregoing pages, numbered 1 to 317, inclusive, comprise a full, true, and correct statement and transcript of such testimony and proceedings.

Dated at Fairbanks, Alaska, this 18th day of January, 1947.

/s/ MURIEL ANDERSON LOMEN,
Court Reporter.

[Endorsed]: No. 11513. United States Circuit Court of Appeals for the Ninth Circuit. Percy James Cutting, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal From the District Court for the Territory of Alaska, Fourth Division.

Filed: September 25, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

Excerpt from Proceedings of Monday,
May 5, 1947.

Before: Mathews, Healy and Orr,
Circuit Judges.

No. 11513

PERCY J. CUTTING vs. U. S. A.

ORDER DENYING MOTION TO DISMISS,
AND EXTENDING TIME TO FILE TRAN-
SCRIPT OF RECORD.

Ordered motion of appellee to dismiss appeal for failure of appellant to prosecute such appeal submitted on papers filed in support of and opposition to said motion—Mr. Robert M. McMillan, Assistant United States Attorney, on behalf of counsel for appellee having been heard—and submitted to the court for consideration and decision.

Upon consideration thereof, further ordered said motion to dismiss the appeal herein be, and hereby is denied, and that the time to file the transcript of record on appeal herein be, and hereby is extended to July 5, 1947.

In the United States Circuit Court of Appeals,
Ninth Circuit at San Francisco, California

No. 11513 Undocketed

PERCY J. CUTTING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

MOTION FOR AN ORDER EXTENDING TIME
TO FILE, RECORD AND DOCKET CAUSE

Comes now, Warren A. Taylor, the attorney for the above named appellant and moves this Honorable Court for an order extending the time for the appellant to file, record and docket this cause in appeal to the 5th day of September, 1947, upon the grounds that due to unforeseen circumstances, the appellant will be unable to file, record and docket the said appeal within the time prescribed by order of said Court, to-wit: the 5th day of July, 1947, and for the further reason that it would be inadvisable to require the Clerk of the Court for the Territory of Alaska, Fourth Division, to prepare and deliver said record on appeal within the time heretofore allowed.

This motion is based upon the affidavit of Warren A. Taylor, Attorney for the appellant, which is attached hereto and made a part hereof.

/s/ WARREN A. TAYLOR,
Attorney for the Appellant.

So Ordered:

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit
Judge.

[Seal]

A true copy. Attest: June 23, 1947. Paul P.
O'Brien, Clerk.

United States of America,
Territory of Alaska—ss.

Warren A. Taylor, being first duly sworn upon his oath deposes and says: That he is the attorney for the appellant, Percy J. Cutting; that in the month of December, 1946, the appeal in the above entitled cause was allowed by the District Court, Territory of Alaska, Fourth Division, and that thereafter the court reporter for said Court was instructed to prepare the transcript of the testimony and proceedings in the said cause. That prior to the completion of the said transcript and proceedings affiant was required to go to California for medical and surgical treatment and that while in California underwent an operation and was advised by the doctors to remain in the States and rest and recuperate.

That the affiant did not return to Fairbanks, Alaska, until the first day of April, 1947, and upon

his return found that a large amount of business affairs required his attention and that other business coming into the office made it impossible for him to prepare the necessary papers to perfect the appeal. That thereafter on the 5th day of May, 1947, the above entitled Court extended the time to file, record and docket the appeal to the 5th day of July, 1947.

That since the said order by the Circuit Court of Appeals was made extending the said time as aforesaid, affiant has been engaged in a number of trials at Fairbanks, Alaska, and has been unable to prepare the necessary papers in time to file, record and docket the same in the said Court. That the affiant has also been ill for approximately two weeks and during that time was unable to attend to the business of his office.

Wherefore affiant requests that the time for preparing and delivering said record on appeal to the Circuit Court of Appeals, Ninth Circuit, be extended 60 days to the 5th day of September, 1947.

/s/ WARREN A. TAYLOR,

Subscribed and sworn to before me this 19th day of June, 1947.

[Seal] J. A. LATHANAN, JR.
Notary Public in and for the Territory of Alaska.

My Commission expires June 20, 1951.

[Endorsed]: Filed June 23, 1947.

[Title of Circuit Court of Appeals and Cause.]

MOTION FOR AN ORDER EXTENDING TIME
TO FILE, RECORD AND DOCKET CAUSE

Comes now, Warren A. Taylor, the attorney for the above-named appellant and moves this Honorable Court for an order extending the time for the appellant to file, record and docket this cause in appeal to the 5th day of October, 1947, upon the grounds that due to unforeseen circumstances the appellant will be unable to file, record and docket the said appeal within the time prescribed by order of said Court, to-wit: the 5th day of September, 1947, for the reason that the United States Attorney for the Fourth Division, Territory of Alaska, moved the District Court for the Fourth Division, Territory of Alaska, to strike the Bill of Exceptions and Assignment of Errors and certain items in the praecipe for the Transcript of Record, and that the said Court heard the arguments upon the said Motion and now has the same under advisement and has not rendered any decision in the said matter.

That the appellant believes and therefore avers that unless the decision is made by the said District Court within the next few days that it will be impossible to file, record and docket this cause in the time heretofore allowed by the Circuit Court of Appeals.

This motion is based upon the affidavit of Warren A. Taylor, attorney for the appellant which is attached hereto and made a part hereof.

/s/ WARREN A. TAYLOR,
Attorney for the Appellant.

So Ordered:

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit
Judge.

United States of America,
Territory of Alaska—ss.

Warren A. Taylor, being first duly sworn, upon oath deposes and says:

That he is an attorney at law residing at Fairbanks, Alaska, and is one of the attorneys for the appellant in the above-entitled cause; That the Circuit Court of Appeals has heretofore rendered an Order extending time in which to file, record and docket the Appeal in the said cause, to the 5th day of September, 1947.

That the affiant has prepared all the necessary papers and documents on appeal and has served the Bill of Exceptions and the Assignment of Errors upon the United States Attorney, and that the United States Attorney has moved to strike the same from the files as not being in conformity with the rules of Criminal Procedure promulgated by the Supreme Court of the United States which rules are now applicable to the District Courts

for the Territory of Alaska. That the said matter has been argued before the District Court for the Territory of Alaska, Fourth Division. That the Judge of the said Court has taken the matter under advisement and that at the date of this affidavit has rendered no decision upon the same. That unless a decision is made within the next few days that affiant will be unable to file, record and docket the said cause within the time prescribed by the Order of the Circuit Court of Appeals. That if the motion of the United States Attorney is granted by the said District Judge that affiant will require thirty (30) days additional time in which to make the necessary corrections in the matter on appeal.

Wherefore affiant prays that the appellant be granted until the 5th day of October, 1947, in which to file, record and docket the said appeal in the Circuit Court of Appeals for the Ninth Circuit at San Francisco.

/s/ WARREN A. TAYLOR,

Subscribed and sworn to before me this 26th day of August, 1947.

[Seal] /s/ J. A. LATHANAN, JR.,
Notary Public in and for the Territory of Alaska.
My Commission expires May 20, 1951.

[Endorsed]: Filed Aug. 28, 1947.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION TO FILE AMENDED
STATEMENT OF POINTS

It is hereby stipulated by and between Harry O. Arend, United States Attorney, and Warren A. Taylor, attorney for the Defendant, Percy James Cutting, that the Statement of Points heretofore filed in the above-entitled court may be withdrawn and that the Statement of Points filed in the District Court for the Territory of Alaska, Fourth Division, on the 14th day of November, 1947, be substituted therefor.

It is further stipulated that the designation of the portions of the record to be printed heretofore filed in the said District Court be withdrawn and that the entire transcript of the proceedings be printed in lieu thereof.

Dated at Fairbanks, Alaska, this 17th day of November, 1947.

/s/ HARRY O. AREND,
United States Attorney.

/s/ WARREN A. TAYLOR,
Attorney for Defendant.

So Ordered:

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit
Judge.

[Endorsed]: Filed Nov. 22, 1947.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

Comes now the above-named Defendant and alleges that the Judgment and Commitment of the above-entitled Court made and entered in the above-entitled cause on the 11th day of December, 1946, is erroneous and unjust to him and should be reversed, and he filed the following Statement of Points upon which he will rely, to-wit:

1. That the Court erred in the overruling Defendant's motion to dismiss count I and II in the indictment for the reason that the allegations therein contained do not constitute a cause of action against the Defendant.

2. That the Court erred in admitting in evidence Plaintiff's Exhibit A over Defendant's objection.

3. That the Court erred in overruling Defendant's motion for direct verdict of "not guilty" made at the conclusion of Plaintiff's case in chief upon the grounds that there had been no evidence of ownership of the range in question, and also upon the grounds that the testimony offered by the Plaintiff has shown that the Defendant was lawfully in possession of the said range. (Pl. Ex. E.)

4. The Court erred in overruling Defendant's objection to the admission of Plaintiff's Exhibit E (electric range) in evidence.

5. That the Court erred in admitting in evidence Plaintiff's exhibit A, unsigned memorandum receipt.

6. That the verdict is contrary to the evidence:

(a) That there is no evidence that the Plaintiff's exhibit E was property of the United States Government.

(b) That there is no evidence of the taking by the defendant except that of accomplices whose testimony was uncorroborated and whose testimony should be viewed with suspicion.

(c) Testimony of Audrey Cutting and Sylvia Henderson regarding purchase of range, Plaintiff's exhibit E, and Defendant's exhibits 2 and 3 bearing signature of M. W. O'Neil.

7. The Court erred in admitting in evidence Plaintiff's exhibit 2 upon the grounds that the constitutional rights of the Defendant have been violated by the taking of the exhibit by officers of the Federal Bureau of Investigation without a search warrant.

8. That the Court erred in overruling Defendant's motion for a new trial.

9. That the Court erred in rendering and entering judgment and commitment against said Defendant, Percy James Cutting.

Wherefore, Defendant prays that said Judgment and Commitment be set aside and be vacated in the furtherance of justice and in accordance with law.

/s/ WARREN A. TAYLOR,
Attorney for the Defendant.

Due service of the foregoing Statement of Points, and receipt of a copy thereof, acknowledged this 14th day of November, 1947.

/s/ HARRY O. OREND,
United States Attorney.

[Endorsed]: Filed Nov. 22, 1947.

No. 11,513

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

PERCY JAMES CUTTING,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLANT.

WARREN A. TAYLOR,

P. O. Box 200, Fairbanks, Alaska,

Attorney for Appellant.

FILED

JUL 14 1948

PAUL P. O'BRIEN,
CLERK

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Federal Digest, Volume 6, Criminal Law, Key 444, page 5847	8
Voorhees on Arrest, Sections 169 and 170, at pages 96 and 97	6

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

PERCY JAMES CUTTING,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLANT.

The plaintiff in error, Percy James Cutting, was convicted in the United States District Court for the Territory of Alaska, Fourth Division, of the crime of petit larceny, on an indictment which is as follows:

“In the District Court for the Territory of Alaska
Fourth Judicial Division

No. 1268 Cr.

United States of America

VS.

Percy James Cutting

INDICTMENT

COUNT I.

Percy James Cutting is accused in Count I of this indictment by the Grand Jury for the Territory of

Alaska, Fourth Judicial Division, of the crime of Grand Larceny committed as follows, to-wit:

That the said Percy James Cutting, on or about the 22nd day of October, 1945, in the Fourth Division, Territory of Alaska, then and there being, did then and there wilfully, unlawfully and feloniously take, steal and carry away one (1) Westinghouse electric range, type TH64, Serial No. 830175, frame style No. 1086298, of the value of more than Thirty-five Dollars (\$35.00), the personal property of the United States of America, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

COUNT II.

Percy James Cutting is accused in Count II of this indictment by the Grand Jury for the Territory of Alaska, Fourth Judicial Division, of the crime of Grand Larceny committed as follows, to-wit:

That the said Percy James Cutting, on or about the 24th day of October, 1945, in the Fourth Division, Territory of Alaska, then and there being, did then and there wilfully, unlawfully and feloniously take, steal and carry away one (1) Westinghouse refrigerator, further identified by a refrigeration unit name plate showing model JX-5, style 9630150, Serial No. 4218652, of the value of more than Thirty-five Dollars (\$35.00), the personal property of the United States of America, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Dated at Fairbanks, Alaska, this 23rd day of February, 1946.

Harry O. Arend,
United States Attorney.

Witnesses before the Grand Jury:

Andrew Jackson Hall	Virginia Houston
Thomas E. Murton	Erling Nestland
Bernard J. Zobel	James M. Jorgensen
Joseph L. Lymp	Mrs. Ben Grueneich
Charles V. Cors	Leo Hardy
Mrs. D. E. Nichols	Harold Byrd
Stanley D. Baskin"	

During the trial of plaintiff's case in chief, Count II of the Indictment was dismissed.

The appellant was sentenced by the Honorable Harry E. Pratt, Judge of the District Court, to serve a term of one (1) year in the federal jail at Fairbanks, Alaska.

The errors assigned are as follows:

1. That the Court erred in overruling defendant's motion to dismiss Counts I and II in the Indictment for the reason that the allegations therein contained do not constitute a cause of action against the defendant.

2. That the Court erred in admitting in evidence Plaintiff's Exhibit A over defendant's objection.

3. That the Court erred in overruling defendant's motion for direct verdict of "not guilty" made at the conclusion of plaintiff's case in chief upon the grounds

that there had been no evidence of ownership of the range in question, and also upon the grounds that the testimony offered by the plaintiff has shown that the defendant was lawfully in possession of the said range. (Pl. Ex. E.)

4. The Court erred in overruling defendant's objection to the admission of Plaintiff's Exhibit E (electric range) in evidence.

5. That the Court erred in admitting in evidence Plaintiff's Exhibit A, unsigned memorandum receipt.

6. That the verdict is contrary to the evidence:

(a) That there is no evidence that the Plaintiff's Exhibit E was property of the United States Government.

(b) That there is no evidence of the taking by the defendant except that of accomplices whose testimony was uncorroborated and whose testimony should be viewed with suspicion.

(c) Testimony of Audrey Cutting and Sylvia Henderson regarding purchase of range, Plaintiff's Exhibit E, and Defendant's Exhibits 2 and 3 bearing signature of M. W. O'Neil.

7. The Court erred in admitting in evidence Plaintiff's Exhibit 2 upon the grounds that the constitutional rights of the defendant have been violated by the taking of the exhibit by officers of the Federal Bureau of Investigation without a search warrant.

8. That the Court erred in overruling defendant's motion for a new trial.

9. That the Court erred in rendering and entering judgment and commitment against said defendant, Percy James Cutting.

There are several assignments of error shown by the record herein, but appellant chiefly relies upon and urges, what is considered to be the three chief errors, to-wit: the insufficiency of the evidence to support the verdict; the improper admission of evidence and certain exhibits and the manner in which the evidence was acquired by an agency of the Government. Upon the insufficiency of the evidence, as to the direct identification of the property and as to the real ownership of the property, we state, as a matter of law, that it is incumbent upon the Government, the plaintiff in this case, to establish beyond a reasonable doubt its ownership of the property charged in the indictment to have been the subject of larceny by the accused. Citing *Fosse v. United States of America*, 44 F. (2d) 915, and *Karn v. United States of America*, 158 F. (2d) 168.

Quoting from the language in the opinion of *Karn v. United States of America*, *supra*, the Court stated:

“The prosecution relied entirely upon circumstantial evidence for a conviction. It is sufficient to say that under such circumstances, the evidence must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence. The evidence should be required to point so surely and unerringly to the guilt of the accused as to exclude every reasonable hypothesis but that of guilt. 23 C.J.S. 151, 152, § 907, Criminal Law; *Paddock v. U. S.* (1935), 79 F. 2d 872,

876, 9-CCA; *Ferris v. U. S.* (1930), 40 F. 2d 837, 840, 9-CCA.”

We submit that the same rule applies in the case at bar.

Careful reading of the transcript of the testimony herein will show that at no time was the direct ownership of the property *at the time of the accused of having taken the same*, was the property of the Government. In fact, upon the reading of the transcript, it is shown that the property came into the possession of appellant from a third party, who executed a bill of sale, representing himself to be the true owner of said property.

Upon the question of the failure of the Court to exclude the evidence on defendant's motion, as it was acquired under an illegal search, being taken from the dwelling of defendant; for a definition of a dwelling, as applicable to the case at bar, we quote two sections from *Voorhees on Arrest*, Sections 169 and 170, at pages 96 and 97, as follows:

“§169. Combined Residence and Place of Business.—Where the front of a building is occupied by the owner as a shoe-shop, and is connected with the rear and overhead portion, which is used as a dwelling, the building is a dwelling-house.

“*Rex v. Turner*, 1 Leach (Eng. C. C.), 305.

Stedman v. Crane, 11 Metc. (Mass.) 295.

Barnes v. Peters, L. R. 4 C. P. 539.

People v. Cowteral, 18 Johns. (N. Y.) 115.

Davis v. State, 38 Ohio St. 506.

Pond v. People, 8 Mich. 150.

People v. Dupree, 98 Mich. 26.

“And where a woman occupied as her dwelling a building containing a single room, in which she also carried on her trade as a milliner, and kept therein a stock of millinery goods, it was held that the use of the room as a place of business did not change its character as a dwelling, and that breaking the door in the execution of civil process was illegal.”

“§170. Use of House Must Be Primarily and Habitually for Sleeping Purposes.—The house must be used as the usual and habitual place for sleeping purposes, by the owner or some member of his family, or his servants, in order to make it a dwelling-house.

“A storehouse of the owner, who resides nearby, and in which he *occasionally* slept, is not a dwelling-house. But if a part of a storehouse, communicating with the part used for store purposes, is slept in *habitually* by the owner or some member of his family, although he sleeps there for the purpose of protecting the premises, it is his dwelling-house. If, however, the person who sleeps there is not the owner, or one of his family, or a servant, or clerk, but is employed to sleep there solely for the purpose of protecting the premises, the store is not a dwelling-house. (Italics ours.)

“Welsh v. Wilson, 34 Minn. 92.

State v. Jenkins, 5 Jones (N. C.), 430.

State v. Potts, 75 N. C. 129.

State v. Williams, 90 N. C. 724.”

The Court erred in refusing defendant's motion for a judgment of acquittal. James Wise, a witness called in behalf of the plaintiff, whose testimony appears in

the transcript of the record at pages 35 to 41, and who was at that time the resident engineer at Satellite Field, testified that the property described in the indictment was rightfully and lawfully in the possession of the defendant. Therefore, if the property was rightfully in defendant's possession, as it was, according to the testimony of the said resident engineer, it could not be the subject of larceny.

The Court erred in admitting into evidence a certain alleged memorandum receipt, as the same was not properly identified. Federal Digest, Volume 6, Criminal Law, Key 444, page 5847:

“(U.S.C.C.A. Mo. 1922) In a prosecution for larceny from a railroad car and having in possession the alleged stolen property, papers of the consignor, identified by one in charge of its shipping department as made in the regular course of business under his general supervision, who did not see the work done, nor the entries made, were erroneously admitted in evidence, where the absence of the employee who made the records and who did the work recorded on the sheets was unexplained, except by a statement of counsel that he could not be found.—*Reineke v. U. S.*, 278 F. 724.

“In prosecution for larceny from railroad car and possession of stolen property, where agent of railroad was called as witness and shown a certain paper which he said was the original bill of lading issued to the consignor for the contents of the car, from which property was claimed to have been stolen, such bill of lading was erroneously offered in evidence without further identification.—*Id.*”

For the reasons stated above, appellant respectfully prays that the verdict and commitment be reversed and remanded.

Dated, Fairbanks, Alaska,
July 12, 1948.

Respectfully submitted,
WARREN A. TAYLOR,
Attorney for Appellant.

see vol. 2460
No. 11514

United States
Circuit Court of Appeals
For the Ninth Circuit.

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent,
and
INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L.,
et al., Intervenor,
and
WAREHOUSE UNION LOCAL 6, INTERNATIONAL
LONGSHOREMEN'S & WAREHOUSEMEN'S UNION
(CIO), Intervenor,
and
NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
COLGATE-PALMOLIVE-PEET COMPANY,
Respondent.

Transcript of Record
In Three Volumes
Volume I
Pages 1 to 336

Upon Petition for Review, and Petition to Enforce Order
of the National Labor Relations Board.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1(a)

United States of America

Before the National Labor Relations Board

Twentieth Region

Case No. 20-C-1372

In the Matter of—

COLGATE-PALMOLIVE-PEET COMPANY

and

INTERNATIONAL CHEMICAL WORKERS
UNION, A.F.L.

SECOND AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet Company at Berkeley, California, employing 350 workers in Soap manufacture, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agents and employees, terminated the employment of:

Clyde W. Haynes, July 30, 1945

David Luck singer, July 30, 1945

Frank Marshall, July 30, 1945

Sanford Moreau, July 30, 1945
Harry A. Smith, July 30, 1945
Edwin Thompson, July 31, 1945
Harold Lonnberg, July 31, 1945
Lincoln Olsen, July 31, 1945
William Sherman, July 31, 1945
Calixto Rigo, August 30, 1945
Thomas Azevedo, August 30, 1945
Henry Hellbaum, August 30, 1945
Robert Ashworth, August 30, 1945
Manuel Munoz, August 30, 1945
Nick Tate, August 30, 1945
Glenn Hixson, September 1, 1945
Vincent Barboni, September 1, 1945
Martin Heppeler, September 1, 1945
Albert Zulaica, September 1, 1945
Ann Cerrato, September 1, 1945
Ophelia Reyes, September 1, 1945
Sebastian Ramirez, September 1, 1945
Alden Lee, September 1, 1945
Terry Anderson, September 1, 1945
William C. Howard, September 1, 1945
Kay Norris, September 1, 1945
Ina Mae Paige, September 1, 1945
Felix Denkowski, September 1, 1945
Manuel Souza, September 1, 1945
Henry Gianarelli, September 1, 1945
Caetano Perriera, September 1, 1945
Rose Ros, September 1, 1945
Genevieve Young, September 1, 1945
Frank Richmond, September 5, 1945

Manuel Allegre, September 7, 1945

John Perucca, September 7, 1945

Edward Navarro, September 11, 1945

Rose Gilbert, September 13, 1945

because of their activity in forming Colgate-Palmolive-Peet Company Employees Welfare Association, a labor organization, because of their collective action in presenting grievances to the Company, because of their membership in and activities in behalf of International Chemical Workers Union, A.F.L., a labor organization or because of their refusal to join Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union, C.I.O., a labor organization, and at all times since such dates it has refused and does now refuse to employ the above named employees in violation of Section 8, subsection (3) of said Act.

By the acts set forth in the paragraph above and by threatening to discharge employees because of their membership in or activity in behalf of International Chemical Workers Union, A.F.L., and by other acts and statements, it, by its officers, agents and employees, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subsection (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organizaion.)

INTERNATIONAL CHEMICAL
UNION, A.F.L.

TOBRINER & LAZARUS.

/s/ MATHEW O. TOBRINER,

By /s/ JONATHAN H. ROWELL,
Attorney.

Subscribed and sworn to before me this 18th day
of January, 1946, at San Francisco, California.

[Seal] /s/ ALFRED I. MARTIN,

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires May 18th, 1946.

Dated Filed: January 18, 1946.

BOARD'S EXHIBIT No. 1(b)

[Title of Board and Cause.]

COMPLAINT

It having been charged by International Chemical Workers Union, AFL, that Colgate-Palmolive-Peet Company, herein called respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, 49 Stat. 449, herein

called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, Article IV, Section 1, hereby issues its Complaint and alleges as follows:

I.

Respondent is, and at all times herein mentioned has been, a Delaware corporation with its central office in Jersey City, New Jersey. Respondent operates plants in various States of the United States, including a plant in Berkeley, California, where it is engaged in the manufacture, sale, and distribution of soap, soap products, glycerine, and related products.

II.

Respondent, in the course and conduct of its business in Berkeley, California, causes, and continuously has caused, a substantial amount of machinery, raw materials and supplies, to be purchased and shipped from points in the United States outside the State of California through channels of interstate commerce to Berkeley, California, and causes, and continuously has caused, a substantial amount of the products manufactured at its Berkeley, California, plant to be shipped to points outside the State of California through channels of interstate commerce.

III.

International Chemical Workers Union, herein called the Union, affiliated with the American Fed-

eration of Labor, and Warehouse Union, Local 6, International Longshoremen's and Warehousemen's Union, herein called the ILWU, affiliated with the Congress of Industrial Organizations, are, and at all times herein alleged were labor organizations within the meaning of Section 2, subsection (5) of the Act.

Colgate-Palmolive-Peet Company Employees' Welfare Association, herein called the Association, during all times pertinent herein was a labor organization within the meaning of Section 2, subsection (5) of the Act.

IV.

In a proceeding under Section 9(c) of the Act, a petition in Case No. 20-R-1486 was filed on August 3, 1945, with the Regional Office of the Board in San Francisco, California, requesting on behalf of the Union an investigation and certification of representatives for employees of respondent at the Berkeley plant. Notice of Hearing on the petition was issued August 14, 1945. Hearing was held on August 22, 1945, and Decision and Direction of Election was issued by the Board on September 26, 1945.

V.

Respondent, through its officers, agents, and employees, from about July 30, 1945, to the date of issuance of this Complaint has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by:

- (1) Discharging and threatening to discharge employees because of their membership

in and activity in behalf of the Union, or their failure or refusal to join or assist the ILWU.

(2) Removing literature, posters, and notices of the Union from respondents bulletin boards in the plant, while not disturbing literature, posters, and notices of the ILWU on the same boards.

(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.

(4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged.

(5) Keeping Union meetings under surveillance.

VI.

Respondent by its officers, agents, and employees, on or about July 30, 1945, discharged Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry A. Smith, and on or about July 31, 1945, discharged Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, because of their activity in forming the Association, their attempts to substitute the Association for the ILWU as bargaining representative of respondent's employees, and because of their collective activity on behalf of respondent's employees. At all times since the dates mentioned and particularly on or

about August 17, 1945, the respondent refused and now refuses to reemploy the above-named employees because of their activities as stated, and because of their membership in and activity in behalf of the Union.

Respondent by its officers, agents, and employees on or about the dates shown discharged the following-named employees, and at all times since has refused and now refuses to reemploy them, because of their membership in and activity in behalf of the Union and the Association:

August 30, 1945—Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, Nick Tate.

September 1, 1945—Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William C. Howard, Kay Norris, Ina Mae Paige, Caetano Perreira, Rose Ros, Genevieve Young.

September 5, 1945—Frank Richmond.

September 7, 1945—Manuel Allegre.

September 7, 1945—John Perucca.

September 11, 1945—Edward Novarro.

September 13, 1945—Rose Gilbert.

VII.

By the acts described in Paragraph VI, above, respondent has discriminated and is discriminating in regard to the hire and tenure of employment of the

individuals named therein, thereby discouraging membership in the Union and the Association and thereby encouraging membership in the ILWU, and thereby did engage in and thereby is engaging in, unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

VIII.

By the acts described in Paragraphs V and VI, above, and by each of them, respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby did engage in and thereby is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

IX.

The activities of the respondent described in Paragraphs V, VI, VII, and VIII, occurring in connection with the operations of the respondent described in Paragraphs I and II, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

X.

The acts of the respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on the 18th day of January, 1946, issues its Complaint against Colgate-Palmolive-Peet Company, a corporation, respondent herein.

[Seal] /s/ JOSEPH E. WATSON,
Regional Director, National Labor Relations Board,
Twentieth Region.

BOARD'S EXHIBIT No. 1(g)

[Title of Board and Cause.]

ANSWER OF RESPONDENT, COLGATE-
PALMOLIVE-PEET COMPANY

In answering to the complain in the above-entitled matter, the respondent, Colgate-Palmolive-Peet Company, admits, denies and avers as follows:

1. Answering paragraphs I, II, III and IV, respondent admits the allegations contained in said paragraphs I, II, III and V.

2. Answering paragraph V, subdivisions 1), 2), 3), 4) and 5) thereof, this respondent denies, generally and specifically, each and every, all and singular, the allegations contained in said paragraph V, subdivisions 1), 2), 3), 4), and 5) thereof.

3. Further answering said paragraph V with specific reference to subdivisions 2) and 4), respondent avers that literature and posters, notices and statements emanating from International Chemical Workers Union, Colgate-Palmolive-Peet Company Employees' Welfare Association (International

Chemical Workers Union and said Colgate-Palmolive-Peet Company Employees' Welfare Association are hereinafter referred to collectively as the "Union"), and International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "I.L.W.U.") were at all times mentioned in said complaint distributed to respondent's employees at the entrance of its Berkeley plant and distributed, circulated and sometimes posted in said plant by the respective adherents and partisans of said Union and said I.L.W.U. but without the consent or permission of respondent, and in this connection respondent avers that it was advised and is now advised by counsel that it would not and cannot interfere with the right of adherents and partisans of either the I.L.W.U. and the Union to express their opinions and give notice of what they believed to be their legal rights in the controversy between said I.L.W.U. and said Union, and that for this reason respondent did not at any time, expressly or otherwise, forbid or permit the circulation, distribution and posting of said literature, posters, notices and statements emanating from said I.L.W.U. and said Union.

4. Answering paragraph VI of said complaint, respondent denies, generally and specifically, each and every, all and singular, the allegations contained in paragraph VI.

5. Further answering said paragraph VI, respondent avers, as follows:

(1) At all times mentioned in said complaint and since the 9th day of July, 1941, there has been

and there is now in existence a valid collective bargaining agreement entered into by and between respondent and said I.L.W.U. Section 3 of said collective bargaining agreement provides as follows:

“Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers, for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions hereinabove prescribed. In the hiring of new help for the warehouses, they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U.”

(2) At various times between July 30, 1945, and September 13, 1945, respondent has received communications from said I.L.W.U. advising it that the persons named in said paragraph VI of said complaint had been suspended from membership in the I.L.W.U. and were no longer members in good standing of said I.L.W.U. and requesting that pending the determination of charges filed against said

persons, said persons should be removed from respondent's employ. Respondent was advised by counsel that it had no alternative under the provisions of said section 3 of said collective bargaining agreement but to remove said persons from its employ and pursuant to said advice it did remove said persons from its employ on dates set forth in said paragraph VI of said complaint.

6. Further answering said paragraph VI, respondent avers that it did not remove or discharge Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman because of their activity in forming the association, their attempts to substitute the association for the I.L.W.U. as bargaining representative of respondent's employees and/or because of their collective activity on behalf of respondent's employees. In this connection, respondent avers that said persons above named were removed from respondent's employ at the instance and request of the I.L.W.U. because they were no longer members in good standing of said I.L.W.U.

Further answering said paragraph VI, this respondent avers that it has not refused nor does it now refuse to reemploy any of the persons named in said paragraph VI of said complaint because of their membership in and activity on behalf of the Union, and in this connection respondent avers that because of its contractual obligations as herein set forth, it cannot reemploy said persons until such time as they again become members in good stand-

ing of said I.L.W.U., and that respondent's refusal to reemploy them is based on the fact that said persons are not members in good standing of said I.L.W.U.

7. Further answering said paragraph VI, respondent is informed and believes and on said information and belief avers that Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Huppeler, Alden Lee, Felix Denkowski, Manuel Souza, Albert Zulaica, Ann Cerrato, Ina Mae Paige, Caetano Perreira, Rose Ros, and John Perucca, were charged by said I.L.W.U. with violating the constitution of said I.L.W.U. and policy of said I.L.W.U. as adopted by majority vote of its membership and more specifically with participating in a three-day work stoppage during the War, in violation of said I.L.W.U. wartime no-strike pledge, and in this connection, respondent is also informed and believes and on said information and belief avers that all of said persons above named pleaded guilty to the charge and are now on probation for one year and have been given permission to work out of the I.L.W.U.'s hiring hall and be employed in other concerns having contracts with said I.L.W.U., and that said persons are not during said period of probation members in good standing of said I.L.W.U.

Further answering said paragraph VI, respondent is informed and believes that Sebastian Ramirez, Terry Anderson, Henry Hellbaum, Henry Gianarelli, Ophelia Reyes, William C. Howard, Kay

Norris, Genevieve Young, Frank Richmond and Manuel Allegre were also charged with the offense above specified but refused to stand trial and were expelled from said I.L.W.U. and are not now members of said I.L.W.U.

8. Answering paragraphs VIII, IX and X of said complaint, respondent denies, generally and specifically, each and every, all and singular the allegations contained in said paragraphs VIII, IX and X of said complaint.

Wherefore, respondent, Colgate-Palmolive-Peet Company, respectfully prays that the complaint herein be dismissed.

COLGATE-PALMOLIVE-
PEET COMPANY.

By,
Vice President.

Postoffice address of respondent:

800 Carleton Street

Station A

Berkeley, California.

BARTLEY C. CRUM and

R. J. HECHT,

2002 Russ Building,

San Francisco 4, California,

Attorneys for Respondent.

State of California,

City and County of San Francisco—ss.

B. W. Railey, being first duly sworn, deposes and says that he is a vice president and managing officer of the Berkeley, California, plant of the respondent, Colgate-Palmolive-Peet Company, and makes this affidavit on behalf of said respondent, being authorized so to do;

That he has read the above and foregoing answer and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be averred upon information and belief and as to those matters, he believes it to be true.

B. W. RAILEY.

Subscribed and sworn to before me this 31st day of January, 1946.

[Seal] /s/ MARIE H. STANLEY,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires November 20, 1947.

Received Jan. 31, 1946.

United States of America
Before the National Labor Relations Board
Trial Examining Division
Washington, D. C.

Case No. 20-R-1486

In the Matter of

COLGATE-PALMOLIVE-PEET COMPANY
and
INTERNATIONAL CHEMICAL WORKERS
UNION, A. F. OF L.

Case No. 20-C-1372

COLGATE-PALMOLIVE-PEET COMPANY
and
INTERNATIONAL CHEMICAL WORKERS
UNION, A. F. OF L.

Mr. Wallace E. Royster, for the Board.

Messrs. R. J. Hecht and Bartley C. Crum, of San Francisco, Calif., for the respondent.

Messrs. Matthew O. Tobriner and Jonathan H. Rowell, of San Francisco, Calif., for the A. F. of L.

Gladstein, Anderson, Resner, Sawyer & Edises, of San Francisco, Calif., by Bertram Edises, for the C.I.O.

Intermediate Report

Statement of the Case

On August 3, 1945, International Chemical Workers Union, A.F. of L., herein called the A.F. of L., filed with the Board's Regional Director for the Twentieth Region (San Francisco, California), a petition in Case No. 20-R-1486, alleging that a question affecting commerce had arisen with respect to the representation of employees of Colgate-Palmolive-Peet Company, herein called the respondent, at its Berkeley, California, plant and requesting an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A hearing on the petition was held on August 22, 1945. On September 26, the Board issued its decision and directed that an election by secret ballot be held to determine whether certain of the respondent's employees desired to be represented for the purpose of collective bargaining by the A.F. of L., by Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, herein called the C.I.O., or by neither. The election was held on October 16, and was won by the C.I.O.¹ On October

¹The results were as follows:

Approximate number of eligible voters	390
Void ballots	6
Votes cast for A.F. of L.	126
Votes cast for C.I.O.	181
Votes cast against participating unions	1
Valid votes counted	308
Challenged ballots	44
Valid votes counted plus challenged ballots	352

25, the A.F. of L. filed objections to the election, and on January 17, 1946, the Regional Director issued a report on the objections recommending that they be overruled and that the C.I.O. be certified as the bargaining representative of the respondent's employees in an appropriate unit. The A.F. of L. filed exceptions to the Regional Director's report.

Meanwhile, on August 14, 1945, the A.F. of L. filed a charge; on October 10, 1945, an amended charge; and on January 16 a second amended charge, of unfair labor practices, and on the last date the Board, by its Regional Director, issued a complaint alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent, the A.F. of L., and the C.I.O.

With respect to the unfair labor practices the complaint alleged, in substance, that the respondent from about July 30, 1945, to the date of the complaint, (1) threatened to discharge employees because of their membership in the A.F. of L.; removed notices of the A.F. of L. from the respondent's bulletin boards while not disturbing matter posted by the C.I.O.; refused A.F. of L. representatives access to the respondent's plant, while permitting it to C.I.O. representatives permitted the C.I.O. to post on the respondent's bulletin boards statements threatening adherents of the A.F. of L. with discharge; and kept meetings of the A.F. of L. under surveillance; and (2) on or about July 30,

1945, discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry Smith; on or about July 31, discharged Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman; on or about August 30, 1945, discharged Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, and Nick Tate; on or about September 1, discharged Glenn Hixson, Vincente Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, and Genevieve Young; and discharged Frank Richmond, on September 5, Manuel Allegro and John Perucca on September 7, Edward Navarro on September 11, and Rose Gilbert on September 13, and thereafter refused to employ any of these employees, because of their membership in and activity on behalf of the A.F. of L. and on behalf of Colgate-Palmolive-Peet Company Employees's Welfare Association, herein called the Association.

On February 4, 1946, the respondent filed its answer admitting some of the allegations of the complaint, but denying that it had engaged in any unfair labor practices. As an affirmative defense in its behalf, the respondent pleaded the existence of a closed-shop contract with the C.I.O., and asserted that it discharged the above named employees because of the representation of the C.I.O. that they were not members in good standing of that organization.

Pursuant to notice, a hearing was held from February 4 to 8, 1946, at San Francisco, California, before Horace A. Ruckel, the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. Upon the opening of the hearing, the C.I.O. made a motion to intervene, which the undersigned granted. The Board, the respondent, the A.F. of L. and the C.I.O. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties.

Upon the conclusion of the Board's case, counsel for the respondent made a motion, in which he was joined by counsel for the C.I.O., to dismiss the complaint. The undersigned denied this motion except as to those allegations of the complaint which alleged that the respondent removed notices of the A.F. of L. from the respondent's bulletin boards, that it kept meetings of the A.F. of L. under surveillance, and that it discriminatorily discharged Rose Gilbert. In these respects the motion was granted. At the conclusion of the hearing, the motion to dismiss the complaint was renewed. The undersigned reserved ruling on this motion, which is disposed of by the recommendations hereinafter made. He granted a motion by counsel for the Board to conform the pleadings to the proof in formal matters.

The parties were advised that they might argue orally before the Trial Examiner, and might file briefs with the Trial Examiner by February 22,

1946. Subsequently, this time was extended to March 8. Counsel for the Board argued orally. All the parties filed briefs.

On February 21, 1946, the Board directed a hearing on the A.F. of L.'s objections to the election, and ordered that the representation case be consolidated with the complaint case. On March 8, 1946, the parties entered into a stipulation in which they waived any further hearing in the representation case, and agreed that the record in the complaint case might be used in determining the issues raised by the objections to the election.

Upon the entire record in the case, and from his observations of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The respondent is a Delaware corporation having its central office in Jersey City, New Jersey. It operates plants in Jersey City, New Jersey; Brooklyn, New York (a subsidiary); Jeffersonville, Indiana; Kansas City, Kansas; and Berkeley, California, where it is engaged in the manufacture and sale of soap and glycerin. During the year 1944, the gross sale of the respondent at its Berkeley plant, the only plant involved in this proceeding, were in excess of \$1,000,000. The total sales to customers located outside the State of California amounted to more than 25 per cent of this amount. During the same period raw materials having a

value in excess of \$1,000,000 were used at the Berkeley plant, of which more than 25 per cent was obtained from sources outside the State of California. The respondent admits that it is engaged in commerce within the meaning of the Act.

On July 30, 1945, at or about the beginning of the series of events which formed the subject matter of the hearing, the respondent employed at its Berkeley plant approximately 313 non-supervisory employees.

II. The Labor Organizations Involved

International Chemical Workers Union, affiliated with the American Federation of Labor, and Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, are labor organizations admitting employees of the respondent to membership.

Colgate-Palmolive-Peet Employees' Welfare Association, herein called the Association, was an unaffiliated labor organization admitting employees of the respondent to membership.

III. The Unfair Labor Practices

A. The discharges; other alleged acts of interference, restraint and coercion.

1. The discharges in July.

The C.I.O. has represented the respondent's employees' since 1938. On July 9, 1941, it entered into a contract with the respondent which, in addition to establishing the wages, hours, and other working

conditions of the employees covered by it, granted the C.I.O. a closed shop.² The contract was of indefinite duration, terminable upon 30 days notice by either party.³ From time to time during the life

²This provision reads as follows:

“Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions herein above prescribed. In the hiring of new help (for the warehouses), they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U.”

³The provisions relating to the life of the contract are as follows:

“Section 18. Future Changes. The above constitutes an agreement between the Company and its employees, represented by the International Longshoremen's and Warehouse men's Union, Local 1-6, and shall remain in effect unless and until changes become necessary because of conditions beyond the control of the Company or are requested by the employees through their representatives.

“Thirty (30) days notice will be required before the adoption of any change suggested by either the employees or the Company and no change of any sort will be made without col-

of the contract it was amended by various supplemental agreements, the last dated July 24, 1945, when the contract was extended pending approval by the War Labor Board of certain provisions of a new contract agreed upon by the parties.⁴

It is clear from the record that there had been for some time prior to the events hereinafter related a considerable dissatisfaction with their bargaining agent among the respondent's employees, as well as some friction between the C.I.O. plant stewards, five in number, and the officers of the I.L.W.U. The origin of this dissatisfaction and friction are less clear. However, some time in July, according

lective agreement to it having been arrived at between the Company and the representatives of the employees. If and when such changes are found necessary they will be made with due regard for the mutual rights, privileges and well being of the employees and the Company."

⁴The extension agreement reads:

Memorandum of Agreement

"It is hereby agreed that certain contract dated July 9, 1941, by and between Warehouse Union, Local 6, I.L.W.U., and Colgate, Palmolive Peet Company, shall remain in full force and effect, ending the disposition of those provisions which apply to the following:

Shift differentials

Wage rates for women workers

Sick leave

and upon which agreement has been reached by the parties hereto, subject to approval of the Tenth Regional War Labor Board."

to the testimony of Frank Marshall, one of the five stewards, and former chairman of the Steward's Council,⁵ he and others established contact with District 50 of the United Mine Workers of America and the matter of the affiliation of the respondent's employees with that organization was discussed. On July 26 a group of dissident members of the C.I.O. held a dinner meeting at a local cafe where they discussed severance of their relationship with the C.I.O., and the formation of the Association as an organizing committee to bridge the gap between the C.I.O. and such new affiliation as might be determined upon. This meeting was attended by approximately 30 union members, including the 5 stewards, namely, Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry Smith, and including Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, four other employees who came to figure prominently in the events hereinafter related. A decision was made at this meeting to call an open meeting of the respondent's employees for July 30, for the purpose of presenting a resolution withdrawing from the C.I.O.

It was stipulated by the parties, and the undersigned finds, that the respondent had no knowledge of the July 26 meeting.

⁵Local 6 admitted to membership employees of other employers, principally in the warehousing industry. In those plants in which Local 6 had contracts, a steward representative was chosen to sit with stewards from other plants on the Steward's Council.

On July 28, the following notice was posted on the three bulletin boards in the plant:

Notice of Meeting

Special Meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, Berkeley, California, across from Burbank School, at 4:15 p. m., Monday, July 30, 1945.

This notice was observed during the day of July 28, by Clifford Altman, plant superintendent, who, late in the afternoon, reported it to Charles Wood, in charge of the respondent's labor relations. Altman testified that the notice was meaningless to him. Wood testified that he concluded merely that some sort of a welfare organization was being formed, perhaps one with facilities for extending credit to employees. The undersigned credits the testimony of Altman and Wood in this respect, and concludes that the respondent was not aware at this time that some of its employees were taking steps to form another labor organization and change their union affiliation. During the afternoon of July 30, a group of four officers of the C.I.O., headed by Paul Heide, vice-president, called at Altman's office and handed him a letter, in substance as follows:

This is to notify you that charges have been preferred by this Union against the following employees of your Company, and that they have been suspended from membership of this organization pending a trial as provided for in

the Constitution of our local Union: Clyde W. Haynes, Dave Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith.

We, therefore, respectfully request that the above-named employees of your Company be immediately removed from the job until such time as the charges against them have been determined by this organization.

Altman, when he had finished reading the letter, showed it to B. W. Railey, the respondent's vice-president. A conversation ensued between Railey and the C. I. O. representatives, in Altman's office, testified to by Railey as follows:

Q. Will you relate to the best of your recollection the gist or substance of that conversation?

A. We told those people that this was—comes as a very great surprise to us, literally a bombshell. We knew nothing about what it was about, or any reason why these men should be suspended, and protested the thing because we told them they had been loyal employees as far as we were concerned and we had no charges against them. We were quickly reminded of our contract with the C.I.O. which specified—which carried a paragraph to the effect that all employees must be in good standing with the union to work at our plant.

* * * *

Q. Did any further conversations or discussions ensue after that?

A. These gentlemen that represented the C.I.O. told us that these men must be discon-

tinued immediately. They told us that they had sent a notice of their suspension to each man by registered mail, each man that was involved——.

* * * *

Q. (By Mr. Hecht): What else happened, Mr. Railey?

A. It was finally agreed that we should call these five men into the office . . .

Q. And what occurred then?

A. When they came to our office the C.I.O. officials handed each of them a carbon copy of a letter which they stated had been mailed to their homes. These gentlemen looked at the letters briefly and crushed them in their hands and stuck them in their pockets and walked out of the office.

Q. No conversation between the five men?

A. No conversation.

Q. Between the five men and the C.I.O. officials?

A. No.

Q. Any statement to you by these five men?

A. No.

The conference broke up when Railey told the five stewards that, inasmuch as he had been informed that they were not in good standing with the C.I.O., the respondent, under the terms of its closed shop contract, would have to let them go until their good standing was restored.

There is no substantial conflict between Railey's testimony and that of Altman with respect to the

conference in the latter's office. Nor do the accounts given by Marshall and Smith, the only two stewards who testified to the conference, differ in any material respect from those of Railey and Altman. It is noteworthy, and the undersigned finds, that neither during the conversations between Railey and Altman, on the one hand, and the four officials of the C.I.O., on the other, which took place previous to the calling in of the five stewards, nor during the conversation after the arrival of the stewards, was any mention made by anyone of any interest in or activity on behalf of any labor organization other than the C.I.O. In other words, no charge of "dual unionism" was made as a reason for demanding the discharge of the stewards, nor any accusation by any of the stewards that their discharge was motivated by their activity in obtaining another bargaining agent. Nor did the representatives of the C.I.O. explain in what respect the stewards had failed to maintain good standing in the C.I.O.; nor did Railey, Altman, or any of the stewards, inquire.⁶

Railey testified credibly as follows as to his lack of knowledge of the C.I.O.'s motivation in requesting the discharge:⁷

⁶Smith testified that he did not engage in any conversation whatever with any of the representatives of the C.I.O., and Marshall's testimony fails to reveal any exchange of remarks with them.

⁷Wood's testimony to the effect that he made various but unsuccessful inquiries as to the meaning of the phrase "good standing," is hereinafter set forth in connection with subsequent discharges.

Q. Mr. Railey, did you make any attempt to find out the reason why the persons you have named were discharged?

* * * *

A. No.

Q. Did you ask the C.I.O. officials?

A. I don't recall ever asking them, but we were sure that that was—that they had the right to suspend anyone for many different reasons.

* * * *

Q. Did you during that period⁸ get information from any source as to the nature of the controversy or what was said to be the nature of the controversy.

A. No.

Q. Did you read the Daily Press?

A. Yes.

Q. Was there anything in the Daily Press with reference to this controversy?

A. The racial question came up in the papers, many of the papers that I read.⁹

Between the break-up of the conference in Altman's office and the time of the meeting, C.I.O. representatives distributed throughout the plant copies of a bulletin in the following form:

⁸The witness is testifying to the period between July 30 and August 2.

⁹Subsequently, on October 10, as the result of a union trial, Marshall and Sherman were found guilty, among other things, of "discrimination" against negro employees in the handling of grievances.

Attention !

All Warehouse Union Members:

An illegal meeting has been called by certain employees of Peet's now under suspension as members of this union for violation of the membership oath, and other illegal acts.

Warning ! ! !

Any member of Local 6 who attends such illegal meeting or participates in violations of our constitution, does so at the risk of losing membership and employment.

GENERAL EXECUTIVE BOARD

Warehouse Union

Local #6, I.L.W.U.

Unlike the notice posted on July 28 announcing the meeting of the Association, this bulletin was not, so far as the record reveals, posted on any of the bulletin boards. There is no evidence that the bulletin came to the attention of any of the respondent's officials.

A substantial majority of the respondent's employees attended the meeting. During its course a motion was adopted to "withdraw from the C.I.O. and International Longshoremen's and Warehousemen's Union, District #1, Local 6," and to "form an Independent Union and seek affiliation with another International." The name "Employees Welfare Association" was adopted for the group.

Another motion was carried "to work tomorrow morning pending settlement of 5 Brother Shop Stewards laid off by management at request of I.L.W.U. officials. If shop stewards don't work, nobody works." Also adopted was a motion naming four employees, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, whose alleged discriminatory discharges are hereinafter discussed, as a negotiating committee to seek the reinstatement of the discharged stewards. It was voted that the stewards should continue to perform their functions until an election of officers could be held.¹⁰

It was stipulated, and the undersigned finds, that all the employees named in the complaint, with the exception of Rigo, Perreira, and Gilbert, attended this meeting and concurred in the action there taken.

Upon the close of the meeting the following telegram was sent to the C.I.O.:

You are hereby notified that more than 200 employees of the Colgate-Palmolive-Peet Co., all being former members of your union and being more than 50% of such employees by action taken for such purpose have and do hereby withdraw from your union, sever connections and refuse to be further bound by any

¹⁰These findings are based upon the minutes of the meeting, in evidence.

of the laws rules or regulations of the constitution of I.L.W.U.

EMPLOYEES WELFARE
ASSOCIATION

By Negotiating Committee

E. H. Thompson

W. Sherman

and the following to the respondent:

You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co. all being former members of ILWU 1-6 and being more than 50 per cent of total employees have withdrawn and severed relations with ILWU-6 as collective bargaining agent.

EMPLOYEES WELFARE
ASSOCIATION

By Negotiating Committee

E H Thompson

William Sherman

H Lonnberg

L Olson

On the next day, July 31, Thompson, Lonnberg, Olsen and Sherman went to Altman's office and requested that the respondent reinstate the five stewards. Altman refused, stating that they had been suspended from membership by the C.I.O., and that the respondent had no choice, under its contract with the Union, but to suspend the stewards from their employment. From Altman's office the

committee went to Railey's office where it informed Railey of the dispatch of the telegram announcing that a majority of the employees had severed their membership in the C.I.O. The telegram arrived during the course of the conversation. At Railey's suggestion, C.I.O. officials, who were at the moment in Altman's office, were called in. Railey testified credibly as follows concerning the conversation which ensued:

Q. Was this a free-for-all, or had either side spokesmen?

A. I would say it was more or less a free-for-all. As I recall it, Mr. Lynden, the President of the C.I.O., and Mr. Sherman of this negotiating committee, did most of the talking.

Q. Can you relate the gist of this conversation or talk between the two men?

A. Well, to boil it down, the C.I.O. people told this negotiating committee that these people would have to stand trial on the charges against them, they could not work until those charges were disposed of, and they repeatedly reminded them . . . of the oaths that they took when they joined the C.I.O. and the consequence of a violation of those oaths, and assured them that they had done everything they could to get increases for the employees of the company, pointed out that the wages were frozen, nothing they could do about it . . . and at one stage of the meeting the negotiating committee walked out.

Q. About what time would you say that was?

A. Oh, I would guess it was probably about 9:30 in the morning.

Q. Did you continue the conference with the C.I.O. officials? A. Yes, we did.

Q. What was the subject of the conference?

A. We told them that our factory the afternoon before had been a very . . . in a state of turmoil due to the fact of a lot of conversation and visiting, and union people going through the plants, and people couldn't get their work done. And we asked them if they wouldn't leave the grounds, and they said, well, they would leave if this negotiating committee and the . . . or rather if the five stewards that had been suspended would leave. And we immediately went out to the factory and located the five stewards, and I believe all of the members of the negotiating committee were with them at the same time, told them the request that we had made of the C.I.O. officials, and told them we were going to make the same request of them because the C.I.O. officials certainly wouldn't leave if they didn't leave, and they finally agreed to leave.

Sometime during the day of July 31, representatives of the C.I.O. handed Altman a letter which was in substance as follows:

This is to notify you that the employees be-

low have been suspended from membership in this union and are no longer members in good standing.

Pending the determination of charges which have been filed against those persons in accordance with our Constitution and By-Laws, you are requested, in accordance with our Agreement, to remove these persons from your employ until such time as you receive word from us in regard to their status as members in this union.

ED THOMPSON.

H. LONNBERG.

LINCOLN OLSEN.

WILLIAM SHERMAN.

During the morning of July 31, representatives of the C.I.O. distributed copies of the following circular in the plant:

Attention All Members

I.L.W.U. #6

Employed at Colgate, Palmolive, Peet Company

Look Before You Leap

Because of a constant campaign of misinformation and falsehoods carried on by Sherman-Marshall-Lundeberg & Co., many otherwise reliable members of our union are being misled down a blind alley, and into action that can only result in losses and hardship for the membership involved. The unscrupulous people

who are attempting to promote strike action at this plant are traitors to our union membership, our flag and our country! All members who join with them are jeopardizing their own reputation, their union standing, their seniority and their jobs! Any strike at this plant will bring an immediate directive from the Regional War Labor Board to return to work—and will resolve no issues—fancied or otherwise!

So that all members may understand the true situation, the following is a copy of agreement extending the provisions of the union contract, including the requirement that only members of Warehouse Union, Local #6, I.L.W.U., in good standing may be employed by the company. It will be enforced by the entire membership of our union, if it becomes necessary. (Underscoring in original).

The provisions of the extension agreement of July 24 were set forth at the bottom of the circular.

At noon on July 31, the four committeemen were active in rallying attendance at another meeting at Finnish Hall. At this meeting, similarly attended by a substantial majority of the respondent's employees, and presided over by Sherman, it was voted to "continue the meeting until shop stewards all returned to work." Railey, upon the invitation of the group, appeared and answered inquiries as to why the five stewards were not permitted to work. He stated, as he had previously done, to the stew-

ards themselves, that under the respondent's contract with the C.I.O. the respondent could employ only those who were members in good standing in that union. He declared that the question of their good standing was one between the Union and the individual member.

The meeting of July 31 was "recessed" until August 2, and for 2½ days most of the respondent's employees, including those named in the complaint, stayed away from work. Although the work stoppage was generally characterized as a "continuous meeting" by the employees involved, it is clear, and the undersigned finds, that it constituted a strike. It is equally obvious that the five stewards and the four committeemen were among the leaders of the strike. It was stipulated that those who took part in the strike did so with full knowledge of the C.I.O.'s no-strike pledge.¹¹

During the interval between July 31 and August 3, the four committeemen, Thompson, Lonnberg, Olsen, and Sherman, received letters from the C.I.O. in the following form:

In accordance with Article 15, Sections 1, 2 & 3, and in accordance with Section 7 of the same Article, of the Constitution of Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union, you are hereby notified that charges are preferred against you for

¹¹This refers to the war-time pledge given by the I.L.W.U. and other affiliated C.I.O. unions.

the following violations of the constitution and By-Laws of this organization:

1. Violation of Declaration of Principles.
2. Violation of Oath of membership.
3. Violation of Article 9, Section 1.

You are hereby notified that in accordance with Section 14, of Article 15, the Executive Committee finds that there is good cause to believe the charges to be true, and you are, therefore, suspended as a member of this Local as of this date, losing all rights, privileges, pending a trial as provided for in Article 15 of the Constitution of Warehouse Union, Local 6, I.L.W.U.

At the meeting on August 2, also attended by a substantial majority of the employees, a resolution was adopted to dissolve the Association and to affiliate with the A. F. of L. Harvey Howard, A. F. of L. business agent, was authorized "to sign all necessary papers for the employees of Colgate-Palmolive-Peet Co. relative to wages, hours, and conditions of employment."¹² The strike was called off, and on August 3 all the respondent's employees excepting the five stewards and the four committeemen returned to work.

The committeemen were advised by Railey that their suspension had been requested by the C.I.O. and that it would be useless for them to report for work.

¹²Quoted from the minutes of the meeting, which are in evidence.

2. Alleged assistance to the C.I.O. by the respondent during August

On August 3, the day on which the respondent's striking employees, with the exception of the discharged stewards and committeemen, returned to work, the A. F. of L. filed a petition for certification of representatives. The period following was utilized by adherents of both the C.I.O. and the A. F. of L. in campaigning for the union of their choice. Literature of both unions circulated freely, inside as well as outside the plant. A. F. of L. and C.I.O. buttons were widely and openly worn. In various occasions, according to the credible testimony of witnesses called by the Board, employees were buttonholed on the job by C.I.O. stewards and their support for the C.I.O. solicited. There were occasions, revealed by the record, when employees whose loyalty to the C.I.O. was wavering were threatened by C.I.O. functionaries with discharge. The credible and uncontradicted testimony of Albert Zulaica, for example, concerning a conversation with Hack Gleichman,¹³ a representative of the C.I.O., not in the respondent's employ, was to the following effect:

¹³The C.I.O. appointed new stewards in place of the five discharged. Following their appointment, officials of the C.I.O., particularly Gleichman, appear to have been in the plant more frequently than previously. On the occasion in question Zulaica had been talking with Leacock, one of the newly appointed stewards, who accused him of passing out A. F. of L. literature in the plant, and Gleichman had interposed in the conversation.

Trial Examiner Ruckel: . . . What else did he say?

The Witness: Well, he say, "I think that you fellows have been misled," he says, "because we can throw you people out for wearing those A. F. of L. buttons." I said, "Well, you can't do that." I said, "If you start doing that you will have to throw the majority out because most of them are wearing an A. F. of L. button."

Trial Examiner Ruckel: In the plant?

The Witness: In the plant, yes. Then he says, "We don't have to do that." He says, "We can pick some of you out, throw you out and claim that you were leaders, and that will scare the rest of them," and I said, "Well, we don't scare so very easy as all that." I says, "You will have to throw all of us out before we will ever stop," I said, "because most everyone here is fed up with the C.I.O."

No supervisory employee was present during the above conversation. Later, Zulaica asked Don Stanberry, production manager, for advice, and Stanberry said, according to Zulaica's version of the conversation, that if he would take off his A. F. of L. button he would have no trouble, but that if he wanted to belong to another union "they could never take that out of [his] heart." Stanberry testified that he told Zulaica only that the respondent had been compelled to discharge the five stewards and four committeemen because of its contract

with the C.I.O., but that Zulaica had as much of a right to express an opinion as any other employee, and that he should avoid a controversy with Steward Leacock.

Whether Zulaica's version of this conversation, or Stanberry's is taken as the more accurate, the undersigned does not find that Stanberry's remarks were intimidatory.

Further illustrative of activities of the C.I.O. stewards, which the Board contends constitute interference, restraint, and coercion by the respondent, and additionally illustrative of the extent to which A. F. of L. as well as C.I.O. adherents solicited in the plant, is the credited testimony of Kay Norris and Nick Tate. That of Norris was as follows:

Q. Did you overhear any conversation that Mr. Gleichman may have had with anyone in the Toilet Department?

A. Yes. He went around to numerous employees on our floor and warned them to take their buttons off or they would be suspended as . . . they would be in the same predicament as the Stewards were.

* * * * *

Q. Did you wear an A. F. of L. button at work? A. I did.

Q. Did you wear it prominently on your clothes?

A. I wore it at all times.

Q. Did you pass out any A. F. of L. literature? A. I did.

Q. That was in the plant?

A. In the plant.

Q. Did you pass out A. F. of L. buttons?

A. I did, in the plant.

The testimony of Tate was as follows:

Q. All right. Now what was the conversation?

A. Well, Ed¹⁴ told me he wanted to check my book, and I went in there and got my book, and I was just standing there and he said—he looked over to me and told—I don't know if he was talking to Hack (Gleichman), or the whole crowd, he said, "Check in Nick Tate's book, he was one of the A. F. of L. organizers."

* * * * *

Q. What was it again he said to you. Well?

An A. F. of L. organizer?

A. He said, I was an A. F. of L. organizer.

Q. Were you? A. Sure I was.

The record contains instances other than those cited above of stewards and organizers of the C.I.O. in effect, threatening employees with loss of employment if they joined or assisted the A. F. of L. In no instance, however, so far as the record reveals, did any such conversation take place in the presence of any supervisory employee.¹⁵

¹⁴Ed Bopp, one of the newly appointed stewards.

¹⁵In addition, at least one copy of a circular which contained among other things, a threat that adherents of the A. F. of L. might lose their employment, was posted on one of the three bulletin boards. However, there is no evidence as to how long it remained posted, or that it came to the respondent's attention.

The hearing on the A. F. of L.'s petition was held on August 22. On August 25, there occurred an incident upon which is based the allegation of the complaint that the respondent refused A. F. of L. representatives access to the plant while granting it to C.I.O. representatives. On this date Harry Howard, a representative of the A. F. of L., in the company of Luchsinger and Lonnberg, entered the plant without permission for the purpose of soliciting membership in that organization. They remained there until discovered by Cecil Carter, the respondent's process supervisor. Upon Luchsinger's admitting that they did not have permission to be in the plant, Carter requested the group to leave. Howard protested the presence in the plant of Carlisle Harrison, a representative for the C.I.O. After Luchsinger and Howard had left, Carter investigated Harrison's presence and ascertained that he had been brought into the plant by Gleichman to assist the latter in checking the dues books of the employees, a practice which the respondent had for several years permitted the C.I.O.¹⁶ After talking with Wood on the plant telephone, and on his instructions, Carter, according to his credible testimony, accompanied Gleichman and Harrison through the plant and saw that they did no "electioneering."

¹⁶It was stipulated that the respondent, since the execution of the 1941 contract containing the closed-shop provision, has always permitted union representatives to collect dues in the plant.

The undersigned finds that the treatment accorded A. F. of L. representatives on this occasion, did not, in the circumstances, amount to interference, restraint, or coercion.

3. The discharges in late August and on September 1

Beginning on August 31, the respondent, upon the request of the C.I.O., discharged several groups of employees who participated in the strike on July 30. The first group, consisting of six employees,¹⁷ were discharged on August 31, pursuant to a request from the C.I.O. and a charge that they were not members in good standing of the C.I.O. On September 1, the C.I.O. posted a number of its adherents at the plant gate and checked the dues books of the employees as they entered the plant. Later that day the respondent received a letter from the C.I.O., insubstance as follows:

This is to notify you that the employees named below have been suspended from membership in this Union and are no longer members in good standing.

Pending the determination of charges which have been filed against these persons in accordance with our Constitution and By-Laws, you are requested, in accordance with our Agreement, to remove these persons from your

¹⁷There employees were Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, and Nick Tate.

employ until such time as you receive word from us in regard to their status as members in this Union.

Rose Ross	Martin Heppler
Esther Young	Bill Howard
Ina M. Paige	Glex Hixon
Ophelia Reyes	Alden Lee
Kay Norris	Al Barboni
Ann Cerrato	Felix Denkowski
Henry Giannarelli	A. L. Richards
Manuel Souza	Terry Anderson
Albert Zulaica	K. Periera
Mike Ramirez	

Railey called the designated employees to his office where, in the presence of Wood, Altman, Stanberry, and Carter, he read them the above letter and told them that they were suspended from their employment in conformity with the closed-shop provision of the 1941 contract. Several of the employees who were present testified that Railey added, in substance, that he had not wanted them to join a union and that now they must take the consequences, and that Wood said, in effect, that if the employees had "kept this about the A. F. of L. quiet," they would not have been discharged. Railey, Wood, Altman, Stanberry, and Carter testified either that Railey and Wood did not make the statement attributed to them, or that they did not hear them. The undersigned believes it improbable that either Railey or Wood made such statements and finds that they did not.

Wood testified that on several occasions he pressed

C.I.O. officials for clarification of the phrase "good standing" as used in connection with the union membership of these 18 employees and others previously discharged, and that he received no satisfactory explanation. In this connection he gave the following testimony credited by the undersigned:

Q. Did Mr. Gleichman give any reason for wanting to have you remove these men?

A. Well, he said they were in bad standing, that they were no good, and that they—a lot of them weren't up in their dues—In addition to that I think he said there were a large number that were not members of the union.

* * * * *

Q. When you called Paul Heide about this list of 18 did you ask him the reason why these men and women were being put in bad standing?

A. I did.

Q. What answer did you get from Heide?

A. He said that they¹⁸ had violated their oath, the constitution and by-laws and their oath of office, their office of—the oath they took upon initiation, excuse me.

* * * * *

Q. Well, did you make any further effort?

A. I made further ones, yes, and I made previous ones.

Q. And that is the most satisfactory answer you got?

* * * * *

¹⁸There is no evidence that the respondent had any knowledge of the provisions of the C.I.O.'s constitution or by-laws.

A. That is the only answer I ever got.

Q. All right. On September 1, 1945, or let us even carry it further, September 15, 1945, had you, Mr. Wood, formed any definite opinion for the reason why these men were being put in bad standing by the Union?

A. No, I hadn't. I was somewhat bewildered.

Q. What was the reason for your bewilderment?

A. Well, I didn't think it was only for union activities, or anti-union activities alone, because many people had not been disturbed that I had observed wearing buttons and passing out literature.

* * * * *

Q. (By Mr. Hecht) Did those persons, Mr. Wood, to whom you have reference, continue to wear the A. F. of L. buttons and pass out the A. F. of L. literature up to and including the date of the election?

A. They did, sir.

Q. Are those persons still in your employ?

A. They are.¹⁹

¹⁹Altman testified credibly as follows concerning inquiries as to the nature of the C.I.O.'s complaints against those whose discharges were requested:

Q. (By Mr. Hecht): And did any conversations ensue between the persons assembled there?

* * * * *

A. —Lynden said these men cited would have to stand trial, and if they were cleared of

4. Later discharges

Five other employees were discharged at intervals during the month of September,²⁰ in each case at the request of the C.I.O., made allegedly because of their failure to maintain membership in good standing. Each was given a letter by the C.I.O. advising him to that effect. The undersigned, on motion of the respondent, dismissed the complaint as to Rose Gilbert, one of these five employees, since it appeared from her own admission that although she came to work on August 21, and joined the A. F. of L. a few days later, she had not joined the C.I.O. by September 13. On this date according to her own testimony, when her discharge was requested, although Gleichman asked her to join the C.I.O., she replied that she was going to wait until "matters were settled." The C.I.O. requested her discharge the same day.

the charges that had been made against them, why, they would be welcomed to return to work, and also the union said they would pay them for the time they lost if they proved that they were innocent.

Q. Did you inquire as to the nature of the charges made against these men?

A. Well, we did at various times ask what the charges were, and the reply was that they were not in good standing and they would have to stand trial.

Q. That is as much information as you got?

A. That is right.

²⁰These were Frank Richmond, on September 5, Manuel Allegro and John Perucca on September 7, Edward Novarro on September 11, and Rose Gilbert on September 13.

Richmond's uncontradicted and credited testimony concerning the circumstances surrounding his discharge was as follows:

Q. All right. Well, now, let's have the conversation then that took place between Mr. Gleichman and you with no one else present?

* * * * *

A. I was walking across this floor, and I had my A. F. of L. button on. He spied the button, he walks over and he says, "What in the hell are you doing in here?" and I says, "I am working here," and he says, "How long have you been working?" I says, "About ten years." He says, "Did we see your book?" and I says, "You did." And he says, "Let me see it."

And then is when I walked over to my boss.

Carlson, Richmond's foreman, assured the latter that Gleichman was entitled to see his dues book, whereupon Richmond procured it, and showed it to Gleichman. The following conversation ensued between Gleichman and Richmond, out of Carlson's hearing:

Q. (Mr. Hecht): You said what?

The Witness: I said, "I will go and get it." So I went and got the book, and I gave it to him and he just opened up the back of it and got the number. And he says, "1916, huh?" That is all. And I says, "Now I suppose

I will get one of your letters?" He says, "You will."

Q. (By Mr. Royster) And did you?

A. I did.

Edward Navarro came to work for the respondent in December 1944, as a machinist. At that time he was a member of a machinists' union affiliated with the C.I.O., and throughout his employment with the respondent maintained his membership in that organization, and did not join the I.L.W.U. His discharge was requested and effectuated on September 11.

Allegro and Perucca were discharged on September 7. Although the circumstances attending their discharge are not fully revealed by the record, it is clear that they were based upon their failure to maintain membership in good standing in the C.I.O.

Subsequent developments

All the employees named in the complaint were brought to trial before a trial board of the Union, the five stewards and four committeemen on October 3, and the others on December 17, 1945. None of the stewards or committeemen²¹ appeared at the

²¹The stewards and committeemen were charged with and found guilty of violating the union constitution and bylaws, the stewards by reason of the following acts: (1) attacking and violating the "no discrimination" policy of the union; (2) using their positions to falsify the policy of the union and the status of the unions contract; (3) encouraging the non-payment of dues and non-attendance at union meetings; (4) failing to present grievances

trial, and all were expelled. Those tried on December 17, who included the employees discharged on or after August 31, were charged only with participation in a strike in violation of the C.I.O.'s no-strike pledge.²² Of the group of 18 who were

honestly; (5) refusing to post official C.I.O. notices; (6) conferring with enemies of the Union to destroy it.

The decision of the trial committee itemized its findings, in fact, as follows:

“—For instance, they refused to put Section 10 of the Peets’ contract into effect, which called for setting up stewards for each department. They refused to select a Chief Steward as required by the contract. They showed poor judgment in regard to what grievances to present to management. They pushed many phony grievances. —It all amounts up in our opinion to sabotage of the steward’s job.

“The Union’s political action program took a bad beating from the stewards. For instance, they refused to carry out the mandate of the union membership in regard to financial support for the National Citizens Political Action Committee. They sabotaged collection of funds for the defense of Harry Bridges, President of the I.L.W.U. They opposed the program for keeping out the Little Steel formula. They bucked the Union’s program in regard to enforcing O.P.A. regulations.”

The specific charges against the committeemen were for the most part similar to those lodged against the stewards. In addition, the committeemen were accused and found guilty of promoting and leading the strike of July 31, in violation of the C.I.O.’s no strike pledge.

²²With the exception of the six discharged on August 31, who were also accused of offenses similar to those charged against the committeemen.

discharged on September 1, all who appeared at the trial were found guilty of participating in the strike, deprived of their seniority at the respondent's plant, and placed on probation for 1 year, during which time they were not to be eligible to hold a position of trust in the Union. They were, however, given the privilege of working out of the C.I.O.'s hiring hall and of obtaining employment in other plants under contract with the C.I.O.

The respondent was given copies of the trial committee's formal decision with respect to all these employees.

Concluding Findings

The Board and the A. F. of L. contend that the foregoing facts require a finding that the respondent discharged the employees named in the complaint in violation of the Act, and urge that the decisions of the Board in the Rutland Court²³ and Portland Lumber Mills,²⁴ cases are controlling.

It may be readily admitted that one of the reasons, if not the principal one, which motivated the C.I.O. in demanding the discharge of the five stewards and the four committeemen, was their activity in seeking to change the bargaining representative of the respondent's employees. The dinner meeting on July 28, and the open meeting on July 30, were the first steps to that end. Such

²³Rutland Court Owners, Inc., 44 N.L.R.B. 587 and 46 N.L.R.B. 1040.

²⁴Portland Lumber Mills, 65 N.L.R.B. No. 1; 17 L.R.R. 614.

activity may be protected by the Act after a question of representation has arisen, or, as here, when the contract is of indefinite duration and has run for a year or more.²⁵ If the respondent knew that the only reason which prompted the C.I.O. was the "dual Unionism" of the employees in question, then its compliance with the C.I.O.'s request to discharge them was violative of the Act. This principle was established by the Board in the Rutland Court case where the Board pointed out that if the closed-shop proviso of the Act were to be interpreted so as to require an employer to discharge employees solely because they attempted to change their bargaining representative, the Union which obtained a closed-shop contract would tend to become self-perpetuating. Where the employer has lacked knowledge, as in the Diamond T case,²⁶ the Board has dismissed the complaint.

The undersigned finds the element of knowledge lacking in the instant case. Its absence is perhaps more apparent in connection with the five stewards than it is with respect to the other employees.²⁷ It

²⁵Cf. Southwestern Portland Cement Company, 65 N.L.R.B. No. 1 where such activity was held not protected by the Act when it occurred at a time when the contract had 8 months to run, and when the activity was designed to effect an immediate change in the bargaining representative.

²⁶Diamnod T. Motor Car Co. 64 N.L.R.B. No. 205.

²⁷It may be reasonably argued that the respondent's knowledge was immaterial in the case of the stewards, and that the Union would be justified in

is admitted that the respondent did not know of the dinner meeting on July 26, and the undersigned has found that the posted notice of the meeting of the Association on July 30 meant nothing to the respondent who was not then aware of any steps to change the union affiliation of its employees. Moreover, there was nothing in this notice to connect the stewards with the Association. There is no reason to doubt Railey's testimony that when, on July 30, the C.I.O. officials handed him a letter invoking the closed-shop provision of the 1941 contract with respect to the five stewards, the respondent was caught by surprise. Nor did the later conversation between representatives of the C.I.O. and the respondent, and the still later one between them and the five stewards, during which the latter were informed of their discharge, serve to enlighten the

expelling and the respondent in discharging them even though their "bad standing" in the C.I.O. was founded on dual unionism alone. This view takes cognizance of the difference in the degree in loyalty owed by a functionary of a union and a rank and file member, and the strategic position which a steward or an officer occupies in the administration of a union. As has been found, the stewards here were charged and found guilty eventually by the C.I.O. of sabotaging the policies of the international organization. It may well be that if a steward or other functionary of a labor organization seeks to supplant that organization with a competing labor organization, he should first resign his office, and that if he does not, but engages in dual unionism, the first union may expel him even though by so doing it places him in the line of discharge by the employer.

respondent. During neither of these conversations was any accusation made by any of the stewards or by anyone else that the C.I.O.'s demand was based on any other than lawful grounds. It is true that Railey did not inquire as to the precise grounds; but he was not obligated to do so. When Wood and Altman, on subsequent occasions, inquired of C.I.O. representatives as to the nature of the charges against suspended union members, they were told merely that they were no longer in good standing.

Although the respondent's officials might have suspected that the stewards were interested in changing their union affiliation, there was no evidence or claim to this effect before them when the discharges were effectuated. On the contrary, during this period, Railey, according to his credible testimony, read in the papers that certain C.I.O. stewards were being accused of racial discrimination and inferred that this had something to do with their suspension from union membership.

The conclusion that the respondent was under no obligation to investigate the motives which prompted the C.I.O., or to analyze and weigh alternate or mixed motives in an endeavor to ascertain which were decisive and which were only contributory in impelling the C.I.O. to suspend certain of its members and to request their discharge, is hereinafter more fully discussed in connection with the discharges on July 31 of the four committeemen, and the still later discharges of other rank and file union members, as to whom, because of interven-

ing events, the respondent had more knowledge than it had on July 30 when it was compelled to take action with respect to the stewards.

The degree of knowledge which the respondent had at the time it separated the stewards from its employment appears to the undersigned as less than that which the employer had in the Diamond T case where, as the Board found, the employer knew that the employees in question were active on behalf of a rival union. In the instant case, there is no evidence that the respondent had such knowledge as to the stewards. It is agreed that it had no notice of the dinner meeting on July 28, and there is no evidence that it acquired any information as to the dual union activities of any employee between that time and the moment when, on July 30, the C.I.O. first invoked the contract.

Nor, so far as the record reveals, did the bulletin distributed by the C.I.O. on July 30, warning against attending the "illegal" meeting called for that day, come to the respondent's attention. While it is probable that the respondent's officers knew that a meeting was to take place after working hours on that day, apparently its first information as to its purpose was derived from the telegram dispatched upon the close of the meeting, signed by Thompson, Sherman, Lonnberg, and Olsen, in the name of the Association. This telegram did more than reveal that a group of the respondent's employees were interested in a labor organization competing with the C.I.O. It announced that a majority of the employees considered themselves as "for-

mer members" of the C.I.O., who had "withdrawn and severed relations with" it.

Although the respondent appears not to have received this telegram prior to the arrival of Thompson, Sherman, Lonnberg, and Olsen, the four committeemen, in Railey's office the next day, they informed Railey of its contents. The respondent, therefore, must have viewed the committeemen as employees who, for whatever reason, had voluntarily quit the C.I.O. When the respondent shortly thereafter received a letter from that organization requesting that the employment of the committeemen be terminated, the respondent could not reasonably have concluded that the request was based only upon the committeemen's activity on behalf of the Association, and was uninfluenced by the announcement of their withdrawal from the C.I.O. Assuming, for the moment, that the respondent believed that both factors prompted the C.I.O.'s request, the undersigned knows of no feasible method by which the respondent could determine which factor was the motivating one in the C.I.O.'s decision to invoke the closed-shop provision of the contract.²⁸

The meeting at noon on July 31, attended by Railey, and the ensuing strike for 2½ days, revealed

²⁸Or is the presence of an illegitimate motive alongside a legitimate one, sufficient, as the Board has frequently ruled where discharges absent a closed shop are concerned, to render a discharge violative of the Act? The undersigned does not believe that it is.

to the respondent the scope of the dissatisfaction with the C.I.O. Thereafter, the respondent was faced by two labor organizations, each contending for the allegiance of its employees. Proponents of each organization distributed literature openly in the plant, and wore buttons indicating the union of their choice. Statements of C.I.O. organizers to various employees, such as that of Gleichman to Zulaica, that those wearing A. F. of L. buttons could be "thrown out," serve to throw light on the motive of the C.I.O. in requesting the discharges. No such statements were made, however, in the presence of any supervisory employee.

The C.I.O. conducted dues checks on August 25 and September 1. On August 31, it requested that six employees be separated from their employment because of their failure to maintain membership in good standing in the contracting union. This request was followed on the next day by a similar one as to 18 other employees, and, finally, during the following week by demands as to 5 more. In each instance the C.I.O. stated only that the employees had been suspended from membership because they were no longer "in good standing." Wood's inquiries as to what was meant by "good standing" were little more successful in eliciting information than were similar inquiries by Altman. Wood was told, however, that some of the employees in question were behind in their dues and that others were not members of the union. As has been found, this

latter statement was true as to Gilbert and Navarro.²⁹

The respondent knew on August 31 that many of its employees were dissatisfied with the C.I.O. and were actively promoting the A. F. of L., and that the question concerning representation was before the Board for decision. It knew that an election would in all likelihood be ordered, and that the C.I.O. would be in a favorite strategic position if employees adverse to it were removed from their employment and their places taken as of necessity they must be, by employees furnished through the C.I.O.'s hiring hall.³⁰

The respondent knew all these things. On the other hand it could reasonably conclude that these employees had been among those participating in the strike on July 31 in violation of the C.I.O.'s war-time no-strike pledge³¹ and it must have assumed that which was the case, that they had attended the meeting on July 30 when the telegram was dispatched informing the respondent that a number of employees had severed their connection with the C.I.O. Moreover, so far as the respond-

²⁹Navarro, however, as has been found, was a member of another C.I.O. Union.

³⁰The number of employees in the unit increased from approximately 313 on July 31, to approximately 390 at the time of the election. The new employees, of course, were members of the C.I.O.

³¹There is evidence in the record that the strike was the only one participated in by members of the West Coast I.L.W.U. during the recent war.

ent was aware, there might have existed other reasons relating to the internal affairs of the Union, or pertaining to some element of its policy or program, which prompted the suspensions from membership. One such matter of union policy—the C.I.O.'s attitude toward racial discrimination, did come to Railey's attention through the newspapers.

Here, again, as in the case of the stewards and the committeemen, the respondent was under no duty to investigate to ascertain the real motive of the C.I.O. where there was evidence that conflicting motives existed. As the Board said in the Diamond T case:

While the respondent knew of the activities of these employees on behalf of the Union during the pendency of a question concerning representation, it does not follow that the Independent was motivated by such activities and not by lawful considerations in demanding their discharge.

In the Diamond T case, the respondent did not have knowledge of any activity by the employees in question which might have prompted a demand for their discharge, other than their activity on behalf of the rival union. In the instant case, the respondent had knowledge of at least two other facts, one, participation by the employees in an unauthorized strike, and the other, the announcement of their withdrawal of union membership—either of which furnished a lawful basis for suspension by the Union.

That the contracting union might properly discipline members for participating in a strike called in violation of union policy, by suspending or expelling them, seems to the undersigned hardly open to question. A labor organization, no less than any other organization, cannot be denied the authority to compel compliance with the decisions of its membership. "Good standing" in an organization implies something more than the mere payment of dues.

It is sometimes difficult to determine where permissible activity on behalf of a rival organization carries over into such overt acts of sabotage or obstruction directed against the contracting union, as seriously to impair the labor government in the plant and to invoke the union's discipline. It is for this reason, perhaps, that unions ordinarily seek to prescribe any activity on behalf of another labor organization, and to stigmatize it as "dual unionism." When this attempted prescription during an appropriate period, however, enlists the knowing cooperation of the employer, with the consequence that the offending member is discharged and deprived of his livelihood, the Board has not hesitated to find a violation of the Act. In each such instance, however, the Board has required knowledge by the employer, derived from information in its possession at the time it effectuated the discharge. This information has heretofore been of such a na-

ture as not to require any interpretation of evidence, or any independent investigation on its part.³²

The reasons for this seem clear. Any effective investigation which the employer might undertake would almost necessarily involve it in the internal affairs of the Union, and expose the respondent to a charge of interference, restraint, and coercion in violation of the Act. In the instant case, for the respondent to determine to what extent participation in the strike of July 31, and the non-payment of dues, contributed to the suspension of the employees involved, and to what extent their activity on behalf of the A. F. of L. was a factor, the respondent would probably have had to question officers of the C.I.O. and to have had access to the minutes and records of the meeting or meetings at which the Union's decision to suspend them was made. Even then the respondent could hardly have escaped assuming the role of a judge. Such access to the records of a union, is, in effect, barred to him by the

³²In the Rutland Court case, for example, the business agent of the A. F. of L., the contracting union, called the employees into the office of the employer where both the employer and the union agent pressed them to state to which labor organization they gave allegiance. When they answered that they preferred the C.I.O., the agent stated to the employer that the employees had "double crossed" him and forthwith replaced them by others. No reason other than their interest in the C.I.O. was alleged.

In Portland Lumber Mills, the dischargee showed the employer the formal charge against him which stated that he had given "aid and support to a dual organization."

operation of the Act. In any event, he has no means of compelling it.

The undersigned therefore finds that the respondent did not violate the Act by discharging the employees named in the complaint because of the suspension of their membership in the C.I.O., in view of the lawfully agreed requirement of membership in that organization as a condition of employment. Accordingly, the undersigned will recommend that the complaint herein be dismissed.

The Objections to the Election

The undersigned has found that the discharges of the employees named in the complaint did not constitute an unfair labor practice. He now finds that they do not afford a basis for setting aside the result of the election on October 16. It may be noted that none of the discharges took place after the Board's finding, on September 26, that a question of representation had arisen, and directing an election.

The undersigned has found that the respondent did not engage in any other act of interference, restraint, and coercion in violation of the Act. Although, as has been found, certain representatives of the C.I.O., without the knowledge of the respondent, in conversation with employees, threatened them with discharge if they persisted in activities in behalf of the A. F. of L., such statements seem to have had little, if any effect; and partisans of the A. F. of L. continued openly to wear A. F. of L. buttons and to distribute A. F.

of L. literature in the plant. Moreover, all such threats, so far as this record reveals, took place prior to the finding of the Board that a question concerning representation had arisen, and were fairly remote from the election in point of time. Although the Board has on occasion set aside the results of an election because of the conduct of one of the participating unions in which the employer did not participate and for which it was not responsible, the undersigned does not believe that the factual situation as revealed by this record warrants such a step here.

The undersigned will recommend that the objections to the election be overruled.

Upon the basis of the foregoing findings of fact and the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Chemical Workers Union, affiliated with the American Federation of Labor, and Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, 'affiliated with the Congress of Industrial Organizations, are labor organizations, and Colgate-Palmolive-Peet Employees' Welfare Association, unaffiliated, was a labor organization, within the meaning of Section 2 (5) of the Act.

2. The respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. The respondent has not engaged in any unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and the entire record in the case, the undersigned recommends that the complaint against the respondent, Colgate-Palmolive-Peet Company, San Francisco, California, be dismissed in its entirety.

The undersigned further recommends that the A. F. of L.'s objections to the election be overruled.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, request therefor must be made in

writing within ten (10) days from the date of the order transferring the case to the Board.

/s/ HORACE A. RUCKEL,
Trial Examiner.

Dated: March 27, 1945.

[Title of Board and Cause.]

DECISION AND ORDER

On March 27, 1946, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in the unfair labor practices affecting commerce alleged in the complaint, and that there was no sufficient basis for setting aside the result of the election previously held in Case No. 20-R-1486, and recommending that the complaint be dismissed and that the A. F. of L.'s objections to the election be overruled, as set forth in the copy of the Intermediate Report attached hereto.¹ Thereafter, the A. F. of L. and counsel for the Board each duly filed exceptions to the Intermediate Report and a supporting brief.

The Board has considered the rulings of the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire

¹The Intermediate Report was inadvertently dated March 27, 1945.

record in the case, and hereby adopts the findings and conclusions of the Trial Examiner, only insofar as they are consistent with our Decision and Order herein.

CHRONOLOGY OF FACTS

On July 24, 1945, the respondent and the C.I.O. agreed in writing to extend a closed-shop contract made in 1941 and, in part, requiring C.I.O. membership in good standing as a condition of employment, pending decision by the Regional War Labor Board for the Tenth Region approving or disapproving certain contract changes. This extension agreement was made in compliance with the conditions set forth in the proviso to Section 8 (3) of the Act, which permits an employer to make a closed-shop contract with a bona fide majority union covering an appropriate unit.

On July 28, 1945, as the first open break between the C.I.O. and a large group of anti-C.I.O. employees spearheaded by the stewards, a notice was posted on the respondent's three bulletin boards announcing an open meeting of the "Employees Welfare Association" at the end of the afternoon shift on July 30 but containing no explanation of the named organization. The purpose of the meeting was for the employees to withdraw from the C.I.O. and to transfer to some other labor organization. The respondent must have learned of the purpose of the proposed meeting, or it would not have agreed to shut down the plant for about 2 hours so

that the employees on the night shift could attend.²

On July 30, 1945, the respondent discharged the first group of complainants, consisting of the five stewards and including Luchsinger, at the request of the C.I.O. and on the representation by the C.I.O. that the stewards were "suspended from membership" pending determination by the C.I.O. of unspecified "charges against them" which impaired their good standing. Immediately after the discharges, C.I.O. adherents distributed leaflets throughout the plant, warning the employees that they would jeopardize their employment by attending the "illegal" meeting of the Employees Welfare Association scheduled for later that afternoon or by otherwise violating the C.I.O.'s constitution or membership oath. A majority of the respondent's employees, including substantially all the complainants, nevertheless attended the meeting, during which time the respondent shut down its operations pursuant to the agreement set forth above. The meeting voted, apparently without dissent, to withdraw from the C.I.O., to form another labor organization and to go on strike at noon of the following day unless the respondent reinstated the five discharged stewards. A telegram was thereupon sent to the respondent, signed by a four-man negotiating committee appointed at the meeting, stating in part that a majority of the employees,

²The record shows that complainants Luchsinger and Olsen secured Superintendent Altman's agreement to the shut-down.

being "former" C.I.O. members, "have withdrawn" from the C.I.O.

On the morning of July 31, 1945, the negotiating committee went to the respondent's office and interviewed Superintendent Altman and Vice President Railey in an attempt to get the discharged stewards reinstated, at the same time advising the respondent of the anti-C.I.O. telegram, which arrived during the interview. After the anti-C.I.O. purpose of the interview had become plain, Heide, a C.I.O. vice president, who was present, stated before Altman and Railey, admittedly management representatives, that the suspension notices of three of the four members of the negotiating committee were in the mail, asked the name of the fourth member, and upon learning that it was Olsen stated that he too would receive a suspension notice. Thus the respondent was in effect again informed that the C.I.O.'s motive was to remove the opposition. Later that morning, the C.I.O. distributed throughout the plant copies of another leaflet, again warning the employees that they might lose their jobs by assisting the C.I.O. "traitors." At about the same time, the C.I.O. advised the respondent that the four members of the negotiating committee had been suspended from membership pending determination of unspecified charges against them, and demanded their discharge.

At noon on July 31, 1945, the Employees Welfare Association held another meeting, likewise attended by a substantial majority of the respondent's employees, at which it was decided to "continue the

meeting" until the stewards were reinstated, although Vice President Railey was present on invitation to explain that the stewards could not be reinstated because of the closed-shop contract. For the next few days most of the respondent's employees, including all the complainants, stayed away from work because of the "continuous meeting," a stoppage which we find constituted a strike.

On August 2, 1945, the Employees Welfare Association held another meeting, at which it voted to affiliate with the A. F. of L. and to return to work.

On August 3, 1945, most of the respondent's employees, except the five stewards and the four committeemen, returned to work. The first group, consisting of the five stewards, had previously been discharged, and the second group, consisting of the four committeemen, did not return to work because they had been advised by Superintendent Altman that the respondent could not employ them in view of their suspension from membership by the C.I.O.

On the same day the A. F. of L. filed the representation petition herein with the Board, as the respondent admittedly learned shortly thereafter. C.I.O. employees and officials, during working hours, thereupon intensified the campaign, previously initiated by the leaflets described above, to secure the discharge of C.I.O. opponents under the closed-shop contract. This campaign was open and widespread.

On August 13, 1945, the A. F. of L. verified and thereafter duly filed the original unfair labor practice charge herein, alleging the discriminatory discharge of the five stewards and the four committee-

men. At the same time the A. F. of L. filed a waiver in the representation case, waiving its right to protest the results of the prospective election on the grounds alleged in the charge.

On August 15, 1945, according to the uncontradicted and credited testimony of employee Zulaica, he reported to Production Manager Stanberry, admittedly a management representative, that C.I.O. representatives were threatening him in the plant with discharge for wearing an A. F. of L. button. Stanberry admitted at the hearing that it was reported to him that C.I.O. adherents were "threatening the men" with discharge under the closed-shop contract for wearing A. F. of L. buttons.

A few days later, on August 17, 1945, the first two groups of complainants applied to the respondent for reinstatement. According to Wood, the respondent's director of labor relations, and admittedly a management representative, he refused the request on the ground that the applicants had been suspended from C.I.O. membership until the issue of violation of the constitution and by-laws had been "determined between you and the C.I.O."

On August 22, 1945, the date of the Board hearing on the A. F. L.'s petition, the C.I.O. distributed throughout the plant and posted on a bulletin board another leaflet, in part warning the employees of discharge for pro-A. F. of L. or anti-C.I.O. activity.

On August 30, 1945, a C.I.O. representative requested the respondent to discharge about 60 or 70 named employees who were allegedly in bad standing, or about one-fifth of the respondent's total non-

supervisory personnel, according to the estimate of Labor Relations Director Wood. Wood demurred, on the ground that the C.I.O. was "getting too many people involved," which might lead to a serious interruption of the respondent's operations. The C.I.O. then withdrew this particular demand. However, the event must have furnished the respondent further evidence that the C.I.O. was using its closed-shop contract as a means for removing its opponents among the employees.

On August 31, 1945, a C.I.O. representative told employee Norris that she was discharged for transferring from the C.I.O. to the A. F. of L. She reported the conversation to Production Manager Stanberry, who merely replied, "He can't do that." She then attempted to report the conversation to Superintendent Altman, but on finding him out of his office reported it to someone else in the office, who told her to ignore the statement of the C.I.O. representative and return to work.

Between August 31 and September 13, 1945, the respondent invoked the closed-shop contract at the C.I.O.'s request and discharged the remaining 28 complainants, including Zulaica and Norris, referred to above.³ In its brief before the Trial Ex-

³The case of an additional complainant, Rose Gilbert (Schneider), was dismissed at the hearing. The names of the 37 other complainants are variously spelled in the record. In general we have adopted the spellings used by the respondent in a list which it submitted to the Regional Office in January, 1946, and which was received in evidence as Board Exhibit 15.

aminer the respondent admitted knowledge by this time of the A. F. of L. activity of many of its employees, including by inference the aforesaid group of 28 complainants.

On September 26, 1945, the Board issued its Decision and Direction of Election herein,⁴ finding in part that the C.I.O. contract was not a bar to an election because it was of indefinite duration and had been in effect more than a year, and that the A. F. of L. had waived its right to protest the prospective election on the grounds alleged in the unfair labor practice charge filed by it in the complaint case. On October 16, the election was held, giving the C.I.O. a victory of 181 to 126 over the A. F. of L. The A. F. of L. thereafter duly filed objections to the election. The Board, after the close of the hearing in the complaint case herein, ordered a hearing on the objections. The parties then stipulated that they would rest on the evidence previously adduced in the complaint case hearing.

In October and December, 1945, the C.I.O., after trial, expelled the complainants, principally for their anti-C.I.O. conduct in "undermining union policies." There is no evidence that the C.I.O. expelled any of the complainants because of their attempted resignation or withdrawal nor did it so represent to the respondent. There is likewise no evidence that the C.I.O. expelled any of the other employees who had attempted to resign or withdraw.

⁴63 N.L.R.B. 1184.

Conclusions

Upon the foregoing findings of fact and the entire record in the case, we are of the opinion that the respondent knew, when it discharged and refused to reinstate the complainants, that the C.I.O. demanded such action because of the complainants' exercise of the right guaranteed employees in the Act to bargain collectively through representatives "of their own choosing";⁵ that the respondent thereby violated Section 8 (1) and (3) of the Act, for the reasons stated in the Rutland Court case;⁶ and that the A. F. of L.'s objections to the election should be sustained and the election vacated and set aside.

It is clear from the record, and we find, that the respondent knew of the C.I.O.'s reason for demanding the discharges.⁷ Thus, several employees re-

⁵Unlike the Trial Examiner, we do not view the conclusionary testimony by various representatives of the respondent, to the effect that the respondent did not "know" that this was the C.I.O.'s motive, as establishing the respondent's lack of knowledge of such motive.

⁶Matter of Rutland Court Owners, Inc., 44 N. L. R. B. 587, 46 N. L. R. B. 1040, where the cause of the contracting union's discharge demand was the employees' refusal to reaffirm that organization as their collective bargaining representative for the period following the expiration of the term of the current valid contract, and their desire to substitute a rival labor organization. See, also, Matter of Portland Lumber Mills, 64 N. L. R. B. 159.

⁷Chairman Herzog considers this case wholly distinguishable from the recent Spicer Manufacturing Corporation case (70 N.L.R.B., No. 70), because the proof of employer knowledge is overwhelming here, but was—in his opinion—insufficient there.

ported to management representatives that the C.I.O. was threatening them with discharge under the closed-shop contract for rival union activity; and the C.I.O.'s campaign along this line, both orally and by written leaflets, was open and widespread. Moreover, the respondent's knowledge is further shown by its refusal to accede to the C.I.O.'s request for the discharge of what it apparently deemed to be too large and obvious a number of anti-C.I.O. employees. It is true that the respondent was not in possession of all the facts prior to the first and second groups of discharges. Before the discharge of the committeemen at the termination of the strike on August 3, 1945, however, the respondent learned of the C.I.O.'s plan to use its closed-shop contract to remove its opponents, for when C.I.O. Vice President Heide discovered the anti-C.I.O. activity of the committeemen, he baldly told two management representatives, Vice President Railey and Superintendent Altman, that the committeemen were thereupon being suspended. And before the discharge of the stewards the respondent must have learned of their anti-C.I.O. activity, for it is unreasonable to suppose that it would have agreed to the request made by one of them to shut down operations in order to enable working employees to attend a meeting the stewards planned to hold without ascertaining the reason for the meeting. Moreover, the respondent, when it refused the reinstatement application of these two groups of discharged employees on August 17, 1945, was clearly apprised of the nature of the dismissals

by the formal charges of discrimination which the A. F. of L. had filed with the Board. Finally, Labor Relations Director Wood admitted at the hearing, without making any differentiation among the various groups of discharges and refusals to reinstate, that he thought one of the reasons for the C.I.O.'s action was the complainants' anti-C.I.O. activity.⁸

The respondent's position, as revealed in its brief to the Trial Examiner, is that the Rutland Court and Portland Lumber cases are wrong; that it is for the Congress and not the Board to prevent employers from performing closed-shop contracts made pursuant to the express language of the proviso to Section 8 (3) of the Act, if it appears desirable to prevent abuse of such contracts; and that in any event it would be "unjust" to require the respondent to determine whether the C.I.O.'s asserted motivation was "merely ostensible and not real," on

⁸As for the complainants' withdrawal from the C.I.O., which would ordinarily entitle the respondent to discharge them in view of the closed-shop contract, it will be observed that the C.I.O. did not accept their withdrawals nor is there any evidence that the respondent discharged them or rejected the reinstatement application of the stewards and the committeemen for that reason. On the contrary, the respondent's answer and the evidence show beyond dispute that the respondent acted because of the complainants' suspension by the C.I.O. pending determination of charges of anti-C.I.O. activity, and that the attempted withdrawals played no part therein. Apparently the significance of the "withdrawals" occurred to the respondent for the first time in its brief to the Trial Examiner after the close of the hearing.

the ground that the respondent could not “necessarily have deduced” the C.I.O.’s true motive. We find no merit in these contentions. We are satisfied, particularly in view of the C.I.O.’s widespread and open campaign among the employees during the pre-election period and the respondent’s knowledge thereof, that the respondent made no bona fide effort to evaluate all the evidence before it when it allegedly decided, despite the C.I.O.’s failure to deny the obvious facts, to believe that the C.I.O. was not acting in reprisal against the complainants because of their anti-C.I.O. activity.

Upon the entire record, we find, contrary to the Trial Examiner, that the respondent discharged and refused to reinstate the complainants⁹ in violation of Section 8 (1) and (3) of the Act. We further find that the A. F. of L.’s objections to the election should be sustained, not because of any events which preceded the filing by the A. F. of L. of the waiver, but because of the respondent’s subsequent unfair labor practices, which prevented the election from being truly representative of the employees’ free choice and from reflecting their free and untrammelled wishes as to collective bargaining representation. When the Regional Director advises us that the time is appropriate, we shall direct that a new election be held among the respondent’s employees in the unit hereinbefore found appropriate.

⁹Exclusive of Rose Gilbert (Schneider).

The Remedy

Having reversed the Trial Examiner's finding that the respondent did not discharge and refuse to reinstate the complainants (other than Gilbert) in violation of the Act and his failure to recommend that the respondent offer them reinstatement, we shall order our customary remedy in such circumstances, excluding from back pay the period between the date of the Intermediate Report and our Order herein.¹⁰

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Colgate-Palmolive-Peet Company, Berkeley, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in International Chemical Workers Union, A.F. of L., or any other labor organization of its employees, or encouraging membership in International Longshoremen's and Warehousemen's Union, Warehouse Union No. 6, C.I.O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

¹⁰See e. g., *Matter of Bermite Powder Company*, 66 N.L.R.B. No. 93.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munez, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca, and Edward Navarro immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole the persons named above in paragraph 2 (a) of our Order for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to March 27, 1946, the date of the Intermediate Report herein, and from the date of the Decision and Order herein to the date of the

respondent's offer of reinstatement, less his net earnings during said periods;¹¹

(c) Post throughout its plant at Berkeley, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

¹¹By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, County, Municipal, or other work relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

And It Is Further Ordered that the election held herein on October 16, 1945, be, and it hereby is, vacated and set aside.

Signed at Washington, D. C., this 6th day of September, 1946.

NATIONAL LABOR RELATIONS BOARD.

[Seal] PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

APPENDIX A

Notice To All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of their discharge as set forth in the Decision and Order.

Clyde Haynes	Sanford Moreau
David Luchsinger	Harry Smith
Frank Marshall	Edwin Thompson

Alden Lee	Manuel Souza
Terry Anderson	Henry Gianarelli
Felix Denkowski	Albert Zulaica
Harold Lonnberg	Ann Cerrato
Lincoln Olsen	Ophelia Reyes
William Sherman	William Howard
Calitto Rigo	Kay Norris
Robert Ashworth	Ina Paige
Thomas Azevedo	Caetano Perreira
Manuel Munoz	Rose Ros
Henry Hellbaum	Genevieve Young
Nick Tate	Frank Richmond
Glenn Hixson	Manuel Alegre
Vincent Barboni	John Perucca
Martin Heppeler	Edward Navarro
Sebastian Ramirez	

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of our employees because of membership in or activity on behalf of any such labor organization.

**COLGATE-PALMOLIVE-PEET
COMPANY**

By
(Representative) (Title)

Dated

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon appli-

ation in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

[Title of Board and Cause.]

ORDER DENYING MOTION

The Board having, on September 6, 1946, issued a Decision and Order in the above-entitled proceeding, and thereafter, counsel for Colgate-Palmolive-Peet Company having filed a motion to reconsider the aforesaid Decision, and the Board having duly considered the matter,

It Is Hereby Ordered that the aforesaid motion be, and it hereby is, denied, for the reasons already set forth in the said Decision and Order.

Dated, Washington, D. C., November 6, 1946.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 203.67, Rules and Regulations of the National Labor Relations Board—Series 4, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, “In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.”, the same being Case No. 20-C-1372 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

- (1) Copy of order designating Horace A.

Ruckel Trial Examiner for the National Labor Relations Board, dated February 4, 1946.

(2) Stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, together with all exhibits introduced in evidence.

(3) Copy of Company's telegram, dated February 20, 1946, requesting extension of time for filing brief before the Trial Examiner.

(4) Copy of intervenor's telegram, dated February 20, 1946, requesting extension of time to file brief before Trial Examiner.

(5) Copy of telegram, dated February 21, 1946, granting all parties extension of time to file briefs before the Trial Examiner.

(6) Copy of Board's telegram, dated February 26, 1946, granting further extension of time to file brief before Trial Examiner.

(7) Copy of Trial Examiner Ruckel's Intermediate Report, dated March 27, 1946; copy of order transferring case to the Board, dated March 29, 1946, together with affidavit of service thereof.

(8) Copy of Board attorney's telegram, dated April 12, 1946, requesting extension of time to file exceptions.

(9) Copy of union's telegram, dated April 12, 1946, requesting extension of time to file exceptions.

(10) Copy of Board's telegram, dated April 15, 1946, granting all parties extension of time to file exceptions and briefs.

(11) Copy of A. F. L.'s exceptions to the Intermediate report.

(12) Copy of Board Attorney's exceptions to the Intermediate Report, dated April 23, 1946.

(13) Copy of decision and order issued by the National Labor Relations Board on September 6, 1946, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

(14) Copy of Company's telegram, dated September 19, 1946, requesting Board's decision and order be modified.

(15) Copy of Board's telegram, dated September 23, 1946, granting company permission to file a motion to reconsider and memorandum in support thereof.

(16) Copy of company's motion to reconsider.

(17) Copy of Board's order denying motion to reconsider, dated November 6, 1946, together with copy of affidavit of service thereof.

In Testimony Whereof, the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 28th day of January, 1947.

[Seal] /s/ JOHN E. LAWYER,
Chief, Order Section.

[Title of Board.]

CERTIFICATE OF BOARD

I, Minnie A. Wiley, Acting Chief of the Order Section of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of the following documents filed by the International Chemical Workers Union, A.F.L. "In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," the same being Case No. 20-C-1372.

(1) Charge filed by International Chemical Workers Union, A. F. L. on August 14, 1945.

(2) First amended charge filed by International Chemical Workers Union, A. F. of L., on October 4, 1945.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of February 17, A. D. 1947, at Washington, D. C.

MINNIE A. WILEY,

Acting Chief, Order Section.

[Title of Board and Cause.]

FIRST AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet at Berkeley, California, employing 300 workers in manufacture of soap has engaged in and is engaging in unfair labor practices

within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agent and employees, terminated the employment of:

Edwin H. Thompson	7/30/45
Lincoln F. Olsen	"
William Sherman	"
David Luchsinger	"
Harold L. Lonnberg	"
Frank Marshall	7/31/45
Harry Smith	"
Clyde Haynes	"
Sanford Moreau	"
Manuel Munoz	8/30/45
Robert Ashworth	"
Calixto Rigo	"
Tommy Azevedo	"
Nick Tate	8/30/45
Henry Hellbaum	"
Rose Ross	9/ 1/45
Esther Young	"
Ina M. Paige	"
Ophelia Reyes	"
Kay Norris	"
Ann Cerrato	"
Henry Giannarelli	"
Manuel Souza	"
Albert Zulaica	"
Mike Ramirez	"
Martin Heppler	"

Bill Howard	9/ 1/45
Glex Hixon	“
Alden Lee	“
Al Barboni	“
Felix Denkowski	“
A. L. Richards	“
Terry Anderson	“
K. Periera	“
Manuel Alegre	9/ 6/45
John Pevucca	“

because of their membership in and activities on behalf of International Chemical Workers Union, A.F.L., a labor organization, and at all times since such dates it has refused and does now refuse to employ the above-named employees, in violation of Section 8, subdivision (3) of said Act.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents, and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and

affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL CHEMICAL
WORKERS UNION, A.F.L.,

By:

1440 Broadway, Oakland, Calif., HI-5922.

Subscribed and sworn to before me this.....
day of, 1945, at

Field Examiner.

Date filed Oct. 4, 1945.

[Title of Board and Cause.]

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet at Berkeley, California, employing 300 workers in manufacture of soap has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agents and employees, terminated the employment of:

Edwin H. Thompson	July 30, 1945
Lincoln F. Olsen	" " "
William Sherman	" " "
David Luchsinger	" " "
Harold L. Lonnberg	" " "
Frank Marshall	July 31, 1945
Harry Smith	" " "

Clyde Haynes July 31, 1945

Sanford Moreau " " "

because of their refusal to adhere to policies of Warehouse Union Local 1-6 ILWU, a labor organization, and at all times since such dates it has refused and does now refuse to employ the above-named employees, in violation of Section 8, subdivision (3) of said Act.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents, and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL CHEMICAL
WORKERS UNION, A.F.L.,

By: /s/ HARVEY E. HOWARD,

1440 Broadway, Oakland, Calif., HI-5922.

Subscribed and sworn to before me this 13th day of August, 1945, at San Francisco, California.

/s/ MERLE D. VINCENT, JR.,

Field Examiner.

Date filed August 14, 1945.

[Endorsed]: Filed Feb. 20, 1947.

[Title of Board.]

CERTIFICATE OF BOARD

I, Minnie A. Wiley, Acting Chief of the Order Section of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of an extract of transcript of testimony in Case No. 20-R-1486, entitled "In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, AFL."

The material herein is not a part of the record in Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A.F.L., Case No. 20-C-1372, and is not certified as a part of said record. It is merely certified as a true copy of an extract of the transcript of testimony in another case, to wit, In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A.F.L., Case No. 20-R-1486.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of February 17, A. D. 1947, at Washington, D. C.

MINNIE A. WILEY,
Acting Chief, Order Section.

[Title of Board and Cause.]

Pursuant to notice, the above-entitled matter came on for hearing at 10:20 a.m.

Before: Robert E. Tillman, Esq.,
Trial Examiner.

Appearances:

Harvey E. Howard, 1440 Broadway, Oakland, California, Labor Consultant and Representative, appearing on behalf of the International Chemical Workers Union, Local 233, the Petitioner.

O. L. Farr, 1958 High Street, Selma, California, International Representative, appearing on behalf of the International Chemical Workers Union, the Petitioner.

Gladstein, Grossman, Sawyer & Edises, by Bertram Edises, Esq., 1440 Broadway, Oakland, California, appearing on behalf of Warehouse Union No. 6, ILWU, the Interveners.

Charles A. Duarte, 158 Grand Avenue, Oakland, California, Business Agent, appearing on behalf of Warehouse Union No. 6, ILWU, the Intervener.

Paul Heide, 158 Grand Avenue, Oakland, California, Vice President, appearing on behalf of Warehouse Union No. 6, ILWU, the Intervener.

Bartley C. Crum, Russ Building, San Francisco, California, appearing on behalf of Colgate-Palmolive-Peet Company.

Trial Examiner Tillman: The record should show at this time that the Petitioner, International Chemical Workers Union has filed a charge in the matter of Colgate-Palmolive-Peet Company, Case No. 20-C-1372, alleging violation of 8(1) and 8(3) of the Act. At this time I offer as Board's Exhibit 4 a waiver in connection with that charge, signed by the International Chemical Workers Union.

(Thereupon the document above referred to was marked Board's Exhibit No. 4 for identification.)

Trial Examiner Tillman: Do the parties wish to see the waiver?

Mr. Edises: Can we see the charge?

Trial Examiner Tillman: Yes. We will take a five-minute recess.

(Short recess.)

Trial Examiner Tillman: The hearing is in order.

Were there any objections to Board's Exhibit 4, that waiver filed by the International Chemical Workers?

Mr. Crum: We object to it for the record. It is our position that the charge in 20-C-1372 should be disposed of at the same time that this matter is being disposed of.

Trial Examiner Tillman: Is there any other objection?

Mr. Edises: Well, I am not sure that I agree with Mr. Crum that it should be disposed of at the same time that this hearing is disposed of, but I

do not see how, with a charge of violation of 8(3) of the Act and a violation of 8(1) of the Act charging that the company in numerous unspecified ways has interfered with, restrained and coerced its employees in the exercise of their rights under the Act, the Board can properly conduct a fair and free election at this plant until those charges have been aired and disposed of. Now, we certainly would not want to accuse the Chemical Workers of filing wild, groundless, or baseless charges. If there are substance to those charges they involve matters which go to the very essence of the freedom of these employees to choose their own representatives without coercion or interference. We have no way of knowing whether those rights have been interfered with with employees who are members of our organization, as well as members of the Chemical Workers organization, and for that reason we feel that we should place on the record an emphatic protest against proceeding on this representation matter until that charge has been aired and disposed of.

Trial Examiner Tillman: Well, I will overrule the objection to the receipt of the waiver.

(The document heretofore marked Board's Exhibit No. 4 for identification was received in evidence.)

Trial Examiner Tillman: As for your, in effect your motions that the "R" proceeding should not go ahead until the "C" case is decided, that will have to be decided by the Board.

Mr. Edises: May I add that we are not unwilling to participate in or to hear these charges. We favor it. Simply, that we do not feel that the issues here can be disposed of until those are first taken care of.

Mr. Crum: I would like the record to show that we too want these charges of unfair labor practices disposed of also. We are not unwilling to go forward with that. We would like simply to have the matter brought to a hearing.

I think the point made by Mr. Edises has merit, namely, that in spite of the waiver the charges, at least the extent that we know they are, do go to the very root of this matter before you.

Trial Examiner Tillman: Your statement will be before the Board so they will understand your position.

Mr. Edises: Mr. Chairman, would it be possible to get a ruling from the Board on this motion prior to our participating further in the hearing? Would it be possible to get a ruling, for example, by telephone or telegraph, or some other way?

Trial Examiner Tillman: No, I am afraid it isn't. That ruling will be made at the time of the decision.

Mr. Crum: Well, of course, Mr. Examiner, that defeats the very purpose of the motion, does it not?

Trial Examiner Tillman: I do not see that the motion has anything to do with the going ahead with the hearing at this time. The motion is really directed to holding an election as a result of the hearing.

Mr. Crum: Yes, but here is the situation in which on August 14th charges were lodged against the company. We have not even seen the original charge.

Trial Examiner Tillman: That is a customary practice.

Mr. Crum: I know that it is, but we have not seen it. That charge says, at least according to the information we have had from the Board, that we have violated Section 8, Sub-Section 1, and 3, of the National Labor Relations Act by interfering with, restraining, and coercing its employees. There is no description of what manner we coerced them except a line at the bottom that men were discharged because of their refusal to adhere to policies of Warehouse Union Local 6, ILWU.

The point I am trying to make is, and I think it has validity, if these charges remain suspended until the election matter is determined, we are going to have additional difficulty there.

Trial Examiner Tillman: Well, your objection, Mr. Crum, again goes to the holding of an election.

Mr. Edises: Mr. Examiner, a moment ago I said I thought the charges ought to be disposed of before the Board went into the question of representation for the reason that the Board might very conceivably find that there could be no resolution of the question of representation until the unfair labor practices, if any, had been dissipated. But it seems to me that at the very least the Board should consider these matters jointly. In other words, if there is an unfair labor practice or unfair labor practice

in effect at this plant, then there is a condition which must be remedied before the Board can resolve the question of representation.

Now, it is not enough that the A. F. of L. Chemical Workers has stated its willingness to waive the consequences of these unfair labor practices, that it is willing to go ahead with the election; that is an assumption that unfair labor practices could affect only the individuals who happen to have designated the A. F. of L. Chemical Workers, which is a false and unrealistic assumption. We believe ours to be the majority representation at that plant and any unfair labor practices, especially when you consider the broad and unspecified character of the charges filed here, are bound to have an effect upon the employees generally. So we renew very strongly our motion that the Board at least proceed to hear these two matters jointly, and as you know, that is well within the Board's power under its rules and regulations.

Now, I feel that it is necessary that we have a ruling on that matter before we proceed any further in this case.

Trial Examiner Tillman: Well, I will overrule your motion to the effect that the "C" case should be heard with the "R" case, and my only answer to your other objection, Mr. Edises, is that if these charges do affect your organization, then your organization should have filed a charge also.

Mr. Edises: We shall certainly have to consider that possibility, Mr. Examiner.

[Endorsed]: Filed Feb. 20, 1947.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY, (a
corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW OF ORDER
OF NATIONAL LABOR RELATIONS BOARD

To the Honorable, Judges of the United States Circuit Court of Appeals, for the Ninth Circuit:

Colgate-Palmolive-Peet Company, a corporation (hereinafter referred to as the "Petitioner"), respectfully petitions this Court to review a certain final order issued by the National Labor Relations Board (hereinafter referred to as the "Board") in a proceeding instituted by the Board against the Petitioner, in which said proceedings International Chemical Workers Union, A. F. of L. (hereinafter referred to as the "A. F. of L.") was a party, and wherein Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "C. I. O.") was an intervenor. The proceeding resulting in said order is known upon the records of the Board as "In the

Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," Case Uo. 20-C-1372. The decision and order in said proceeding was entered by the Board on September 6, 1946. Thereafter, on September 24, 1946, the Board made an order permitting the Petitioner to file a motion to reconsider. This motion was filed on October 2, 1946. Subsequently, on November 6, 1946, the Board denied said motion to reconsider.

The above proceeding was consolidated, pursuant to order of the Board, with a proceeding for certification of representatives, entitled "In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," Case No. 20-R-1486. On stipulation of the parties, said representation proceeding was determined upon evidence adduced at the hearing held in connection with Case No. 20-C-1372 above referred to.

In support of this petition, your Petitioner respectfully represents, alleges and shows as follows:

I.

Petitioner is, and was at all times herein mentioned, a corporation organized and existing under and by virtue of the laws of the State of Delaware. It operates plants in Jersey City, New Jersey, Brooklyn, New York (a subsidiary), Jeffersonville, Indiana, Kansas City, Kansas, and Berkeley, California. The events giving rise to the above proceedings occurred at the Berkeley, California, plant of the Petitioner. The course of these events extends from July 26, 1945, to October 15, 1945. At said

time and place the Petitioner was engaged in the manufacture and sale of soap and glycerine.

II.

The A. F. of L. is, and was at all times herein mentioned, a voluntary unincorporated labor organization and is, and was at all times herein mentioned, a Local chartered by the International Chemical Workers Union, a voluntary unincorporated association affiliated with the American Federation of Labor.

III.

The C. I. O. is, and was at all times herein mentioned, a voluntary unincorporated labor organization and is, and was at all times herein mentioned, a Local chartered by the International Longshoremen's and Warehousemen's Union, a voluntary unincorporated labor organization affiliated with the Congress of Industrial Organization. Said C. I. O. is now, and has been since the year 1938, the collective bargaining representative of Petitioner's employees. On or about July 9, 1941, the C. I. O., as said representative, entered into a collective bargaining agreement with Petitioner.

IV.

At all times herein mentioned, the labor organizations mentioned in paragraphs II and III hereof admitted, and do now admit, to membership employees of the Petitioner.

V.

At all times herein mentioned, Colgate-Palmolive-Peet Employees Welfare Association (hereinafter

referred to as the "Association") was an unincorporated labor organization, not affiliated with any national or international labor organization, and admitted employees of the Petitioner to membership.

VI.

On July 24, 1945, the Petitioner and the C. I. O. agreed in writing to extend said closed shop contract entered into in 1941, which said contract contained a provision requiring membership in good standing in the C. I. O. as a condition of employment. This extension agreement was made in compliance with the conditions set forth in the proviso to Section 8 (3) of the National Labor Relations Act (29 U.S.C.A. 158 (3)), which permits an employer to make a closed shop contract with a bona fide majority labor union covering an appropriate unit.

VII.

At all times herein mentioned, said C. I. O. was and has been a bona fide labor union representing a majority of the Petitioner's employees in the appropriate unit. The extension contract made on July 24, 1945, as aforesaid, is and has been at all times herein mentioned in full force and effect.

VIII.

Petitioner, by reason of the above mentioned final order of the Board, is a person aggrieved within the meaning of Section 10 (f) of the National Labor Relations Act (29 U. S. C. A. 160 (f)). Said order of the Board is a final order, and requires Petitioner to reinstate thirty-seven former employees who, by suspension and expulsion, forfeited their status as

members in good standing in said C. I. O.; and further requires the Petitioner to make whole said former employees for any loss of pay they may have suffered by reason of their discharge from the employ of the Petitioner. Said order also requires the Petitioner to cease and desist from discouraging membership in the A. F. of L. or any other labor organization of its employees, or encouraging membership in the C. I. O. or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or by discriminating in any manner in regard to their hire or tenure of employment or any term or condition of their employment. Said order, in addition, requires the Petitioner to post throughout its plant at Berkeley, California, certain notices for sixty days, which said notices require a statement by Petitioner offering to said former employees immediate and full reinstatement and a statement that it will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of its employees because of membership in or activity on behalf of any labor organization.

The above described final order of the Board is erroneous in the following particulars:

1. The portion of the order requiring the Petitioner to reinstate employees, who by expulsion and suspension have forfeited their status as members in good standing of the C. I. O., is contrary to the terms of the contract between the Petitioner and the C. I. O.

2. The Board by its order compels the Petitioner to interfere with the exercise of rights guaranteed members of the C. I. O., as employees of the Petitioner, and to interfere with the administration and procedures of the C. I. O., contrary to the provisions of the National Labor Relations Act. (29 U. S. C. A. 158 (1) and (2).)

3. Said order is erroneous in that it deprives the Petitioner and the C. I. O. of valuable property rights, to-wit, said contract, extended or renewed, as stated above, on July 24, 1945, without due process of law.

4. Said order is erroneous in that it deprives the Petitioner, without due process of law, of property, in that it compels it to make whole said employees for any loss of pay which they may have suffered as a result of their dismissal from the employ of the Petitioner.

IX.

This petition for review is, because of the matters set forth hereinabove and hereinafter, authorized by the provisions of the National Labor Relations Act (29 U. S. C. A. 160 (f)), which said statute provides for a review of any such order of the Board in the Circuit Court of Appeals of the United States in the Circuit wherein the unfair labor practices in question are alleged to have been committed or wherein the person charged with the commission of said practices resides or transacts business.

The Petitioner transacts business in the City of Berkeley, County of Alameda, State of California,

and the alleged unfair labor practices occurred in said City of Berkeley.

X.

On August 13, 1945, the A. F. of L. verified and thereafter filed the original unfair labor practice charged in Case No. 20-C-1372, alleging the discriminatory discharge of the following named employees: Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman. No complaint, pursuant to these charges, was ever issued or served on the Petitioner. The above named persons were discharged by Petitioner because of the representation that they were not in good standing with the C. I. O. Said discharges occurred during the period July 30-31, 1945.

Prior to the filing of said charges, the A. F. of L. had, on August 3, 1945, filed a petition in Case No. 20-R-1486, alleging that a question affecting commerce had arisen with respect to the representation of the employees of the Petitioner. Petitioner did not have knowledge of the filing of this petition until August 8, 1945. Pursuant to said petition for certification of representatives, a hearing was held on August 22, 1945. At said hearing, the Petitioner learned for the first time of the filing of said charges on August 13, 1945, and of the matter alleged therein. Said charges alleged that the above named persons had been discharged by the Petitioner because of the refusal of these persons to adhere to the policies of the C. I. O. At said time, the

C. I. O. had many policies and among these were the following:

1. No wartime strikes or work stoppages.
2. No racial discrimination.

XI.

On October 10, 1945, there was filed by the A. F. of L. an amended charge, and on January 18, 1946, a second amended charge. The amended charges alleged the discriminatory discharge of twenty-eight additional employees between August 30 and September 13, 1945. On January 18, 1946, the Board, by its Regional Director, finally issued a complaint alleging that the Petitioner had engaged in, and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 8 (3) and Section 2, subsections (6) and (7), of the National Labor Relations Act. Copies of the complaint, together with notice of the hearing thereon, were duly served on the Petitioner, the A. F. of L. and the C. I. O. On February 4, 1946, the Petitioner filed its answer admitting some of the allegations of the complaint but denying that it had engaged in any unfair labor practices. As an affirmative defense in its behalf, the Petitioner pleaded the existence of a closed shop contract with the C. I. O. and asserted that all of said employees were discharged because of the representations of the C.I.O. that they were not members in good standing in that organization. All of the persons above named as well as all the other complainants in Case No. 20-C-1372 either participated in or fomented and encour-

aged a strike at Petitioner's plant. Said strike lasted from July 30, 1945, to August 2, 1945.

XII.

Prior to the service of said complaint and on September 26, 1945, the Board issued its decision in Case No. 20-R-1486, and directed that an election by secret ballot be held to determine whether the Petitioner's employees desired to be represented for the purpose of collective bargaining by the A. F. of L. or the C. I. O. or by neither. The election was held on October 16, 1945, and was won by the C. I. O. On October 25, 1945, the A. F. of L. filed objections to the election, and on January 17, 1946, the Regional Director issued a report on the objections recommending that they be overruled and that the C. I. O. be certified as the bargaining representative of the Petitioner's employees in the appropriate unit. The A. F. of L. filed exceptions to the Regional Director's report. The final order of the Board above referred to sustained the A. F. of L.'s objections to the election and set aside and vacated said election.

XIII.

Pursuant to notice and order issued by the Regional Director, a hearing was had in connection with Case No. 20-C-1372 at San Francisco, California. This hearing extended from February 4 to February 8, 1946, and Horace A. Ruckel, Trial Examiner duly appointed by the Chief Trial Examiner of the Board, presided. On the opening of the hearing, the C. I. O. made a motion to intervene, which was granted by the Trial Examiner. At said hearing,

beginning as aforesaid on February 4, 1946, oral and documentary evidence was received, and thereafter briefs by all the parties, except the Board, were submitted to the Trial Examiner, and subsequently, on March 27, 1946, said Trial Examiner issued his intermediate report finding that the Petitioner had not engaged in any unfair labor practices within the meaning of Section 8 (1) and Section 8 (3) of the Act, and recommending that the objections to the election be overruled and that the complaint against the Petitioner be dismissed in its entirety. Following the issuance of the intermediate report, the A. F. of L. and the Board filed exceptions thereto. The Board, on September 6, 1946, made its decision that the order overruling the Trial Examiner, and finding that the Petitioner discharged and refused to reinstate the complainants in violation of Section 8 (1) and Section 8 (3) of the Act, and further finding that the A. F. of L.'s objections to the election should be sustained, and ordering that said complainants be reinstated and made whole for pay lost as set forth in paragraph VIII hereof.

XIV.

Said complaint in Case No. 20-C-1372 in paragraph V thereof charged that the Petitioner interfered with the rights guaranteed the employees in Section 7 of the National Labor Relations Act by:

“(1) Discharging and threatening to discharge employees because of their membership in and activity in behalf of the Union, or their failure or refusal to join or assist the ILWU.

(2) Removing literature, posters, and notices of the Union from respondent's bulletin boards in the plant, while not disturbing literature, posters and notices of the ILWU on the same boards.

(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.

(4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged.

(5) Keeping Union meetings under surveillance."

Said complaint in paragraph VI thereof charged that the Petitioner had discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman because of their activity in forming the Association mentioned in paragraph V thereof and their attempts to substitute the Association for the C. I. O. as the bargaining representative of the employees and had subsequent to the discharge above mentioned refused to re-employ them because of their said activities and because of their membership in and activity on behalf of the A. F. of L.

Said paragraph also charged that the Petitioner had discharged twenty-eight other employees because of their membership in and activity on behalf of the A. F. of L. and the Association.

In paragraph VII of said complaint it was alleged as a conclusion that the charges set forth in paragraph VI thereof constituted discrimination in regard to hire and tenure of employment of the individuals discharged and intended to discourage membership in the A. F. of L. and the Association and to encourage membership in the C. I. O.

The Petitioner's answer to said complaint denied all the material allegations of the complaint and affirmatively, in paragraphs 5, 6, and 7 thereof, averred as follows:

“5. Further answering said paragraph VI, respondent avers, as follows:

(1) At all times mentioned in said complaint and since the 9th day of July, 1941, there has been and there is now in existence a valid collective bargaining agreement entered into by and between respondent and said I.L.W.U. Section 3 of said collective bargaining agreement provides as follows:

‘Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers, for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees cov-

ered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions hereinabove prescribed. In the hiring of new help for the warehouses, they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U.'

(2) At various times between July 30, 1945, and September 13, 1945, respondent has received communications from said I.L.W.U. advising it that the persons named in said paragraph VI of said complaint had been suspended from membership in the I.L.W.U. and were no longer members in good standing of said I.L.W.U. and requesting that pending the determination of charges filed against said persons, said persons should be removed from respondent's employ. Respondent was advised by counsel that it had no alternative under the provisions of said section 3 of said collective bargaining agreement but to remove said persons from its employ and pursuant to said advice it did remove said persons from its employ on dates set forth in said paragraph VI of said complaint.

6. Further answering said paragraph VI, respondent avers that it did not remove or discharge Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lomborg, Lincoln Olsen and William Sherman because

of their activity in forming the association, their attempts to substitute the association for the I.L.W.U. as bargaining representative of respondent's employees and/or because of their collective activity on behalf of respondent's employees. In this connection, respondent avers that said persons above named were removed from respondent's employ at the instance and request of the I.L.W.U. because they were no longer members in good standing of said I.L.W.U.

Further answering said paragraph VI, this respondent avers that it has not refused nor does it now refuse to reemploy any of the persons named in said paragraph VI of said complaint because of their membership in and activity on behalf of the Union, and in this connection respondent avers that because of its contractual obligations as herein set forth, it cannot reemploy said persons until such time as they again become members in good standing of said I.L.W.U., and that respondent's refusal to reemploy them is based on the fact that said persons are not members in good standing of said I.L.W.U.

7. Further answering said paragraph VI, respondent is informed and believes and on said information and belief avers that Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Alden Lee, Felix Denkowski, Manuel Souza, Albert Zulaica, Ann

Cerrato, Ina Mae Paige, Caetano Perreira, Rose Ros and John Perucca, were charged by said I.L.W.U. with violating the constitution of said I.L.W.U. and policy of said I.L.W.U. as adopted by majority vote of its membership and more specifically with participating in a three-day work stoppage during the war, in violation of said I.L.W.U.'s wartime no-strike pledge, and in this connection, respondent is also informed and believes and on said information and belief avers that all of said persons above named pleaded guilty to the charge and are now on probation or one year and have been given permission to work out of the I.L.W.U.'s hiring hall and be employed in other concerns having contracts with said I.L.W.U., and that said persons are not during said period of probation members in good standing of said I.L.W.U.

Further answering said paragraph VI, respondent is informed and believes that Sebastian Ramirez, Terry Anderson, Henry Hellbaum, Henry Gianarelli, Ophelia Reyes, William C. Howard, Kay Norris, Genevieve Young, Frank Richmond and Manuel Allegre were also charged with the offense above specified but refused to stand trial and were expelled from said I.L.W.U. and are not now members of said I.L.W.U."

XV.

The evidence adduced at the hearing sustained without conflict or contradiction each and every one of the affirmative averments of the said answer

above set forth and in addition disclosed the following:

(a) That all of the complainants had given notice to the Petitioner and to the C. I. O. by means of telegrams that they had withdrawn from the C. I. O. and that they were no longer represented by the C. I. O. One of said telegrams read as follows:

“You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co. all being former members of ILWU 1-6 and being more than 50 per cent of total employees have withdrawn and severed relations with ILWU-6 as collective bargaining agent.

EMPLOYEES WELFARE ASSOCIATION.

By Negotiating Committee”

(b) That Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau and Harry Smith, complainants before the Board, were shop stewards policing the said contract on behalf of the C. I. O. and had in the past been reprimanded by the C. I. O. for not enforcing the policy of the C. I. O. against racial discrimination.

(c) That during the war, the C. I. O. had strictly enforced its announced policy against wartime strikes.

(d) That when the work stoppage referred to in the answer occurred, the public press carried news stories with reference to said stoppage and reported

that the above named stewards and others were at odds with the C. I. O. because of differences arising from the policy against racial discrimination.

(e) That the evidence disclosed that the various complainants were tried by rank and file Trial Committees of the C. I. O., and were found guilty of participating in and encouraging a wartime strike and not enforcing other C. I. O. policies, including the policy against racial discrimination.

(f) That said Trial Committees had not found complainants guilty of activity on behalf of the A. F. of L. That many of the Company's employees who had carried on activities on behalf of and joined the A. F. of L. had not been suspended or expelled from the C. I. O. That the Petitioner had knowledge of all matters set forth above in subparagraphs (a), (b), (c), (d) and (e).

(g) That the Petitioner had been advised by the C. I. O. that some of the employees whose discharge was sought were either delinquent in their dues or were not members of the C. I. O. Two of the complainants, Rose Gilbert and Frank Navarro, were in fact not members of the C. I. O.

(h) That as to the other complainants, during the period of the discharges, to-wit, July 30, 1945-September 13, 1945, neither the C. I. O. nor the A. F. of L. informed the Petitioner as to the reasons underlying the dismissals, although the Petitioner endeavored to learn from them the reasons therefor.

(i) That a substantial number of the complainants had pleaded guilty to the charge of having participated in a wartime strike contrary to the poli-

cies of the C. I. O. before a Trial Committee, and that, on the basis of said plea, said complainants were suspended and were working out of the C. I. O. hiring hall but at places other than the Petitioner's plant.

XVI.

During the hearing at the close of the Board's case, counsel for the Petitioner moved to dismiss the following charges in paragraph V of the complaint:

“(2) Removing literature, posters, and notices of the Union from respondent's bulletin boards in the plant, while not disturbing literature, posters, and notices of the ILWU on the same boards.

* * * * *

(5) Keeping Union meetings under surveillance.”

Said motions were granted by the Trial Examiner and in this connection he was not overruled by the Board in its decision and order above referred to.

At the conclusion of the hearing, counsel for the Petitioner renewed a motion to dismiss the following charges in paragraph V of the complaint:

“(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.

(4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged.”

These motions were in effect granted by the Trial Examiner in his intermediate report and as to these rulings he was not overruled by the Board in its aforesaid decision and order.

At the conclusion of the hearing, counsel for the Petitioner moved to dismiss all the other charges contained in the complaint, as follows:

“Mr. Hecht: Mr. Examiner, at this time on behalf of the Respondent I would like to have all charges brought on behalf of Edward Navarro dismissed.

The Examiner will recall that Mr. Navarro was a member of the C. I. O. No. 1304, Machinists, and actually never maintained, or never had an ILWU status at the plant.

* * * * *

Mr. Hecht: Mr. Examiner, at this point I also would like to move to dismiss all charges brought on behalf of the following named complainants: Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppler, Alden Lee, Felix Dunkowski, Manuel Souza, Albert Zulaica, Ann Cerrato, Ina Mae Paige, Catano Periera, Rose Ros and John Pueruca.

The basis of the motion, Mr. Examiner, is the basis of my motion directed to Albert Zulaica, for the reason that these persons who are now complainants here pleaded guilty to charges brought against them by the ILWU, and it is hardly fitting that persons who have admitted

that they were put in bad standing for reasons other than membership of the A. F. of L. should be in this Board before this Board claiming relief on the basis that they were discharged for A. F. of L. activity.

Trial Examiner Ruckel: Ruling on the motion is reserved.

* * * * *

Mr. Hecht: I think that the record and the findings would bear the contrary out, Mr. Royster, and I am not saying they were guilty of the charge, but I am saying that they did admit the charge.

Trial Examiner Ruckel: Any further motions?

Mr. Hecht: I will move, without stating the grounds (I think I have already expressed them to the Examiner) to dismiss the whole proceeding on the basis that this is an attack on the validity of a contract that has not otherwise been in any way impeached as fraudulent, invalid, or an imposition on the desires of the complainants before this Examiner.

Trial Examiner Ruckel: Ruling is reserved." (Record, pp. 692-695.)

In its brief before the Trial Examiner, the Petitioner pointed out that the evidence adduced at the hearing showed that the Petitioner knew of many reasons why the complainants could have been placed in bad standing by the C. I. O. in addition to their activities on behalf of and membership in the A. F. of L.

The Trial Examiner, in recommending that the above motion to dismiss be granted, stated as follows in his intermediate report:

“The reasons for this seem clear. Any effective investigation which the employer might undertake would almost necessarily involve it in the internal affairs of the Union, and expose the respondent to a charge of interference, restraint and coercion in violation of the Act. In the instant case, for the respondent to determine to what extent participation in the strike of July 31, and the non-payment of dues, contributed to the suspension of the employees involved, and to what extent their activity on behalf of the A. F. of L. was a factor, the respondent would probably have had to question officers of the C. I. O. and to have had access to the minutes and records of the meeting or meetings at which the Union’s decision to suspend them was made. Even then the respondent could hardly have escaped assuming the role of a judge. Such access to the records of a union, is, in effect, barred to him by the operation of the Act. In any event, he has no means of compelling it.” (Intermediate Report, p. 23.)

In overruling the Trial Examiner’s recommendations, the Board stated the following:

“The respondent’s position, as revealed in its brief to the Trial Examiner, is that the Rutland Court and Portland Lumber cases are wrong; that it is for the Congress and not the

Board to prevent employers from performing closed-shop contracts made pursuant to the express language of the proviso to Section 8 (3) of the Act, if it appears desirable to prevent abuse of such contracts; and that in any event it would be 'unjust' to require the respondent to determine whether the C. I. O.'s asserted motivation was 'merely ostensible and not real,' on the ground that the respondent could not 'necessarily have deduced' the C. I. O.'s true motive. We find no merit in these contentions. We are satisfied, particularly in view of the C. I. O.'s widespread and open campaign among the employees during the preelection period and the respondent's knowledge thereof, that the respondent made no bona fide effort to evaluate all the evidence before it when it allegedly decided, despite the C. I. O.'s failure to deny the obvious facts, to believe that the C. I. O. was not acting in reprisal against the complainants because of their anti-C. I. O. activity." (Decision and Order, p. 5.)

XVII.

The decision, finding and order of the Board are also erroneous for reasons other than those hereinabove stated in paragraph VIII hereof. These reasons are as follows:

(a) The decision and order of the Board makes a judge of the Petitioner, punishes it for not performing its judicial functions and for failing to evaluate the evidence in a manner which would meet

with the approval of the Board. Under the circumstances of the case, there has been by this decision of the Board set up a new judicial system where the employer serves as a judge of first instance and where the Board is the Court of last resort, with the further and strange complication that the judge of the lower Court is not only reversed but is punished for having committed error in evaluating the evidence presented to it.

(b) The decision and order of the Board are also erroneous because they destroy a contract admittedly protected by Section 8 (3) of the Act.

(c) The decision and order of the Board are erroneous because they read into the Act new provisions not contemplated by its framers and which are in fact contrary to the intention and purpose of those who drafted it. The legislative history of the Act without equivocation discloses that it was not intended to prevent the coercion of employees by other employees and labor organizations. The following is to be found in Senate Report 573, page 16, 74th Congress, First Session:

“There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute ‘coercion.’ A threat to strike, a refusal to work on material of nonunion manufacture, circularization of banners and publications, picketing, even peaceful persuasion. In some courts closed-shop agreements or strikes for such agreements

are condemned as coercive.' Thus to prohibit employees from 'coercing' their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organization, ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act." (Sen. Rep. No. 573, p. 16, 74th Cong., 1st Sess.: House Rep. No. 1174, p. 16, 74th Cong., 1st Sess.) (Emphasis ours.)

(d) The findings of the Board supporting said decision and order must be set aside because they are based either upon invalid inferences or upon facts consistent with either of two inconsistent hypotheses.

All of the foregoing errors have been particularly pointed out to the Board, not only in the brief submitted to the Trial Examiner, which was before it, but also in the Petitioner's motion to reconsider.

Wherefore, your Petitioner prays this Honorable Court to review the Board's order of September 6, 1946, pursuant to Section 10 (f) of the National Labor Relations Act, and that upon the filing of this petition and the service of a copy thereof on the Board and the filing with the Clerk of the Circuit Court of Appeals of a sworn return of such service, a notice that the petition has been filed in the Circuit Court of Appeals be directed to said Board, and that the said Board be directed to certify a transcript of the entire record of these proceedings, to-

wit, the record in Cases Nos. 20-C-1372 and 20-R-1486, including the pleadings, the Trial Examiner's intermediate report, Petitioner's brief and motion to reconsider, the charge filed on August 13, 1945, the testimony and all the evidence upon which the Board's order and decision were entered, and to file it, when so certified, with this Court.

Petitioner further prays that this Honorable Court take jurisdiction of these proceedings and that the order of the Board of September 6, 1946, be stayed pending a disposition thereof and that this Court make and enter a decree setting aside the said decision and order of the Board of September 6, 1946, and for such other and further relief as this Honorable Court may deem just and proper.

Dated, San Francisco, California, December 18, 1946.

Respectfully submitted,

BARTLEY C. CRUM,
PHILIP S. EHRLICH,
R. J. HECHT,
Attorneys for Petitioner.

State of California,
City and County of San Francisco—ss.

B. W. Railey, being first duly sworn, deposes and says:

That he is an officer of the Petitioner Colgate-Palmolive-Peet Company, a corporation, to-wit, a vice-president of said corporation; that he has read

the foregoing petition for review of a final order of the National Labor Relations Board and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated upon information and belief and as to those matters he believes it to be true.

B. W. RAILEY.

Subscribed and sworn to before me this 28th day of December, 1946.

[Seal] /s/ DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of Colifornia.

[Endorsed]: Filed Dec. 30, 1946.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS CONSTITUTING
ERRORS IN FACT AND IN LAW IN
RULINGS AND DECISION OF THE
BOARD RELIED UPON BY PETITIONER
HEREIN.

1. The Board erred in overruling Petitioner's motion to dismiss the complaint:

(a) In that there is no evidence sufficient to establish that the Petitioner discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo,

Manuel Munoz, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca and Edward Navarro for activity on behalf of the International Chemical Workers Union, A. F. of L. (hereinafter referred to as the "A.F.L.") and activity against Warehousemen's Union No. 6, International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "C.I.O.").

(b) In that there is no evidence sufficient to establish intent or purpose by the Petitioner to hinder or penalize the persons named in 1(a) above for activity on behalf of said A.F.L. and activity against said C.I.O.

(c) In that there is no evidence that the Petitioner discriminated against the persons named in 1(a) above, or interfered with the rights of any other employees to self organization, or that the Petitioner engaged in unfair labor practices prohibited by the National Labor Relations Act.

(d) In that the evidence conclusively proves the fact that the Petitioner could not have formed any definite opinion as to the motivation of the C.I.O. in requesting the discharge of the persons named in 1(a) above.

(e) In that the evidence is conclusive of the fact that the discharge of the persons named in

1(a) above by Petitioner was unrelated to any activity of said persons on behalf of the A.F.L. and against the C.I.O. and of the fact that the obligation of the Petitioner's contract with the C.I.O. required it to discharge, upon notice, employees failing to maintain membership in good standing, and of the fact that the discharges of said persons were wholly pursuant to the provisions of said contract.

2. The Board erred in denying the motion of Petitioner to dismiss the said complaint upon which its decision and order are rested, inasmuch as the testimony and the evidence at the hearing established the existence of a contract between Petitioner and the C.I.O., executed in conformity with the terms of the National Labor Relations Act, which said contract, admitted by the Board to be valid, constituted, and does constitute, a complete bar to these proceedings, in that said contract requires the Petitioner upon notice by the C.I.O. to discharge any members of said C.I.O. not in good standing.

3. The Board erred in its decision and order for the reason that the persons named in 1(a) above failed to maintain membership in good standing in said C.I.O., a condition precedent to continued employment, and that their failure to comply with such contractual conditions was the sole cause of their discharges.

4. The Board erred in its decision and order inasmuch as the Board has no jurisdiction over the internal administration or management of the affairs of the C.I.O.

5. The Board erred in its decision and order for the reason that it requires by its said decision that the Petitioner inquire into, interfere with and police the internal administration and management of the C.I.O.'s affairs, all contrary to law, in that neither the Petitioner nor the Board has power or jurisdiction to intrude into the internal management of the C.I.O.'s affairs.

6. The Board erred in its decision and order in that by the terms of the contract admitted to be valid, in accordance with the terms of the National Labor Relations Act, the C.I.O. is the sole judge of its membership, and neither the Petitioner nor the Board possesses power to regulate the Union in its admission or exclusion of members or its power to discipline or try them under its constitution and by-laws, and in that the persons named in 1(a) above were compelled by the terms of said constitution and by-laws to exhaust their remedies within the said C.I.O. and in that, if further relief was desired by them, they were compelled to apply to the Courts of the State of California for a review of the action taken by the C.I.O.

7. The Board erred in its decision and order in that Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Henry Hellbaum, Sebastian Ramirez, Terry Anderson, Henry Gianarelli, Ophelia Reyes, William Howard, Kay Norris, Genevieve Young, Frank Richmond, Manuel Alegre and Ed-

ward Navarro were called upon to stand trial under the terms of the constitution and by-laws of the said C.I.O. but said persons refused to stand trial, and by their said refusal accepted the decision of the C.I.O. debarring them from membership therein, and having failed to avail themselves of the remedies provided by the constitution and by-laws of the C.I.O., no attack upon said decision of the C.I.O. is open to them in proceedings either before the Courts or before any special tribunals, such as the National Labor Relations Board.

8. The Board erred in its decision and order in the Calixto Rigo, Caetano Perreira, Glenn Hixson, Martin Heppeler, Thomas Azevedo, Manuel Souza, Robert Ashworth, Felix Denkowski, Vincent Barboni, Alden Lee, John Perucca, Manuel Munoz, Ann Cerrato, Rose Ros, Ina Paige, Nick Tate and Albert Zulaica were called upon to stand trial before the C.I.O. and did so stand trial on December 17, 1945, and pleaded guilty to the charge of having participated in, or fomenting and encouraging a strike contrary to the policies of the C.I.O., and by said plea of guilty they have accepted the decision of the C.I.O. debarring them from membership and placing them on probation and forbidding said persons from working at the Petitioner's plant; and having so conducted themselves, said persons cannot now make any attack upon said decision of the C.I.O. in proceedings either before the Courts or any special tribunals, such as the National Labor Relations Board.

9. The Board erred in its decision and order in that by its decision the Board undertakes to nullify the constitution and by-laws of the C.I.O., which constitution and by-laws provide an exclusive procedure for review and appeal on behalf of any member aggrieved by an order or decision of expulsion and suspension and to substitute in lieu of the constitution and by-laws of the C.I.O. the Board's own procedure, which said procedure is not laid down by any Act of Congress and is in violation of the terms of the National Labor Relations Act itself and contrary to its legislative history.

10. The Board erred in its decision and order in that it thereby prohibits the coercion of employees by other employees or labor organizations; and said coercion of employees by other employees or labor organizations is not prohibited by the National Labor Relations Act.

11. The Board erred in its decision and order in that it has thereby found the C.I.O. to be guilty of unfair labor practices and it has thereby required the vicarious expiation of the wrong doing, if any, of the C.I.O. through punishment visited upon the Petitioner.

12. The Board erred in its decision and order in that its decision and order requires the Petitioner to breach its contract with the C.I.O. and imposes upon the Petitioner a penalty for complying therewith, notwithstanding that the said contract is valid under the terms of the National Labor Relations Act and is enforceable under the laws of

the State of California where the contract was executed. The Board has no jurisdiction to exonerate or relieve Petitioner from the obligations of said contract.

13. The Board erred in its decision and order in that its decision and order amounts in effect to nullifying Section 8(3) of the National Labor Relations Act, recognizing the validity of the contract herein at issue, and in that it requires the Petitioner to intrude itself as a judge or tribunal into the internal administration and affairs of the C.I.O. and to examine into and inquire into and review its disciplinary measures and procedures and to interfere with the C.I.O.'s rights, under its constitution and by-laws, to expel or discipline delinquent members, contrary to the express terms of the National Labor Relations Act, 29 U.S.C.A. 158 (1) and (2).

14. The Board erred in its decision and order in refusing to dismiss the complaint because there was no evidence or testimony adduced upon the hearing to establish the violations of the National Labor Relations Act alleged in said complaint.

15. The decision and order of the Board is erroneous because there is no evidence sufficient to support the findings of fact and conclusions of law set forth therein.

16. The Board erred in its decision and order in that the said order deprives the Petitioner of property without due process of law inasmuch as Petitioner is called upon under the terms of said

order to make whole the persons named in 1(a) above for any loss of pay they have suffered since the termination of their employment with Petitioner, contrary to the Fifth Amendment to the Constitution of the United States.

17. The Board erred in its decision and order in that the said order deprives this Petitioner of its property rights and privileges accruing to it under its contract herein set forth without due process of law, and serves to impair the obligations and benefits of its contract contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States, and in that it assumes a power in the Board to sit in review or judgment upon the validity of a contract validly executed under the laws of the State of California, and specifically rendered valid under the terms of the National Labor Relations Act, which constitutes a power and a jurisdiction to adjudicate the validity of contracts vested only either in the State or Federal Courts but nowhere granted to the National Labor Relations Board by the provisions of the National Labor Relations Act.

Dated: February 8, 1947.

/s/ BARTLEY C. CRUM,

/s/ PHILIP C. EHRLICH,

/s/ R. J. HECHT,

Attorneys for Petitioner.

[Endorsed]: Filed Feb. 10, 1947.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF AND TO SET ASIDE ITS ORDER AND REQUEST FOR ENFORCEMENT OF SAID ORDER.

To: The Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, U.S.C. Supp. V, Title 29, Sec. 151, et seq.), hereinafter called the Act, files this answer to the petition for review of and to set aside an order issued by the Board against Colgate-Palmolive-Peet Company, petitioner herein, and the Board's request for enforcement of said order.

1. The Board admits the allegations contained in Parts II, IV, V, IX, and XII, of the Petition for Review.

2. Answering the allegations contained in Part VII of the Petition for Review, the Board admits that its order is a final order, and that Petitioner is a person aggrieved within the meaning of Section 10(f) of the Act. And further answering the allegations contained in said Part, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evi-

dence, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter. And further answering the allegations contained in said Part, the Board denies each and every allegation of error contained in subparagraphs 1 through 4.

3. Answering the allegations contained in Parts I, III, VI, VII, X, XI, XIII, XIV, XV, and XVI, of the Petition for Review, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter.

4. The Board denies each and every allegation of error contained in Part XVII of the Petition for Review.

5. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

6. The Board respectfully requests this Court to deny the Petitioner's prayer, contained in Part XVII of the Petition for Review, that the Board's decision and order be set aside.

7. The Board further respectfully requests this Court to deny the Petitioner's prayer, contained in Part XVII of the Petition for Review, that the Board's order be stayed pending the disposition of the proceedings herein.

8. The Board, pursuant to Section 10(e) of the National Labor Relations Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on September 6, 1946, in the proceedings designated on the records of the Board as Case No. 20-C-1372, entitled: "In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L."

In support of this request for enforcement of its order, the Board respectfully shows:

(a) Colgate-Palmolive-Peet Company, a Delaware corporation, is engaged in business at Berkeley, California. This Court has jurisdiction of the Petition for Review herein and of the request for enforcement by virtue of Section 10(e) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, and including a complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Trial Examiner's report and exceptions thereto, the Board, on September 6, 1946, duly stated its findings of fact and conclusions of law and issued its order directed to petitioner and its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations

Act, the National Labor Relations Board hereby orders that the respondent, Colgate-Palmolive-Peet Company, Berkeley, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in International Chemical Workers Union, A.F. of L., or any other labor organization of its employees, or encouraging membership in International Longshoremen's and Warehousemen's Union, Warehouse Union No. 6, C.I.O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Clyde Haynes, David Luch-singer, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonin-berg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munzo, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Ander-son, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophe-lia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John

Perucca, and Edward Navarro immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges:

(b) Make whole the persons named above in paragraph 2(a) of our Order for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to March 27, 1946, the date of the Intermediate Report herein, and from the date of the Decision and Order herein to the date of the respondent's offer of reinstatement, less his net earnings during said period;¹¹

(c) Post throughout its plant at Berkeley, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly

¹¹By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Corssett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) On September 6, 1946, the Board's Decision and Order was duly served upon the petitioner.

(d) Pursuant to Section 10(e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified transcript of the entire record in this proceeding, to be served upon petitioner, and that this Court take jurisdiction of the proceeding and of the questions to be determined therein and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon so much of the order set forth hereinabove, a decree denying the petition to review and set aside and enforce in whole said

order of the Board, and requiring petitioner and its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by petitioner, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to all Employees, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by a decree of the United States Circuit Court of Appeals for the Ninth Circuit, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:." The Board further prays that in lieu of the phrase "Above-named union" in the second paragraph of "Appendix A" there be substituted "International Chemical Workers Union, A.F.L."

A. NORMAN SOMERS,

Assistant General Counsel
National Labor
Relations Board.

Dated at Washington, D. C., this 28th day of January, 1947.

Appendix A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of their discharge as set forth in the Decision and Order.

Clyde Haynes	Alden Lee
David Luchsinger	Terry Anderson
Frank Marshall	Felix Denkowski
Sanford Moreau	Manuel Souza
Harry Smith	Henry Gianarelli
Edwin Thompson	Albert Zulaica
Harold Lonnberg	Ann Cerrato
Lincoln Olsen	Ophelia Reyes
William Sherman	Kay Norris
Calitto Rigo	Ina Paige
Robert Ashworth	Caetano Perreira
Manuel Munoz	Rose Ros
Henry Hellbaum	Genevieve Young
Nick Tate	Frank Richmond
Glenn Hixson	Manuel Alegre
Vincent Barboni	John Perucca
Martin Heppeler	Edward Navarro
Sebastian Ramirez	

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of our employees because of membership in or activity on behalf of any such labor organization.

COLGATE-PALMOLIVE-
PEET COMPANY,
(Employer).

By
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

District of Columbia—ss.

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, respondent and petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and petition for enforcement and has knowledge of the contents

thereof; and that the statements therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn before me this 28th day of January, 1947.

[Seal] /s/ JOHN E. LAWYER,
Notary Public, District of
Columbia.

My Commission Expires August 14, 1949.

[Endorsed]: Filed Feb. 3, 1947.

At a Stated Term, to wit: The October Term 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the seventeenth day of February in the year of our Lord one thousand nine hundred and forty-seven.

Present: Honorable Francis A. Garrecht,
Senior Circuit Judge, Presiding,
Honorable Homer T. Bone, Circuit Judge,
Honorable William Orr, Circuit Judge.

[Title of Cause.]

ORDER PERMITTING INTERVENTION

Upon consideration of the motion to intervene of Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union, C.I.O., filed

February 13, 1947, and of the petition to intervene of International Chemical Workers Union, A. F. of L., and of Clyde Haynes et al., filed February 13, 1947, and good cause therefor appearing,

It Is Ordered that each of said petitions to intervene be, and hereby is granted, and that said petitioners be, and they hereby are allowed to intervene in the above-entitled cause, and that they are allowed to file and serve their respective complaints in intervention.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY
(a corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

INTERNATIONAL CHEMICAL WORKERS
UNION, A. F. OF L., CLYDE HAYNES,
DAVID LUCHSINGER, FRANK MAR-
SHALL, SANFORD MOREAU, HARRY
SMITH, EDWIN THOMPSON, HAROLD
LONNBERG, LINCOLN OLSEN, WILLIAM
SHERMAN, CALITTO RIGO, ROBERT
ASHWORTH, THOMAS AZEVEDO, MAN-

UEL MUNOZ, HENRY HELLBAUM, NICK
TATE, GLENN HIXSON, VINCENT BAR-
BONI, MARTIN HEPPELER, SEBAS-
TIAN RAMIREZ, ALDEN LEE, TERRY
ANDERSON, FELIX DENKOWSKI, MAN-
UEL SOUZA, HENRY GIANARELLI,
ALBERT ZULAICA, ANN CERRATO,
OPHELIA REYES, WILLIAM HOWARD,
KAY NORRIS, INA PAIGE, CAETANO
PERREIRA, ROSE ROS, GENEVIEVE
YOUNG, FRANK RICHMOND, MANUEL
ALEGRE, JOHN PERUCCA and EDWARD
NAVARRO,

Plaintiffs in Intervention,

vs.

COLGATE-PALMOLIVE-PEET COMPANY,
a corporation,
Defendant in Intervention.

COMPLAINT IN INTERVENTION

Comes now plaintiffs in intervention, after leave of this Court first had and obtained, and file this, their Complaint in Intervention, and for cause of action and grounds for intervention allege:

I.

That plaintiff in intervention, International Chemical Workers Union, A. F. of L., hereinafter called AFL, was at all times herein mentioned a labor organization as defined in the National Labor Relations Act, and was the duly constituted repre-

sentative of the above-individually named plaintiffs in intervention.

II.

That on September 6, 1946, the National Labor Relations Board made an order, which has now become final, ordering defendant in intervention:

a) To cease and desist from discouraging membership in the AFL, or any other labor organization, or encouraging membership in any labor organization by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

b) To offer the above-individually named plaintiffs in intervention immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and

c) To make whole said individually named plaintiffs in intervention for any loss of pay they have suffered by reason of defendant in intervention's discrimination against them.

III.

That defendant in intervention, instead of complying with said order of the National Labor Relations Board, has petitioned this Court to review said order.

IV.

That the above-named plaintiffs in intervention are the beneficiaries of said order, and would be the parties aggrieved by any modification thereof by this Court.

V.

That said order was in all respects duly made by said National Labor Relations Board upon sufficient and proper evidence offered and received in a hearing before a Trial Examiner of said National Labor Relations Board; that the sole issue in said case was whether defendant in intervention discharged the said individually named plaintiffs in intervention with knowledge of their activities on behalf of the AFL, and in the exercise of the right guaranteed to said persons, as employees of defendant in intervention, by the National Labor Relations Act to bargain collectively through representatives of their own choosing; that said evidence disclosed that defendant in intervention

a) knew of said activities and the purpose thereof as early as July 28, 1945, two days before the first discharges herein, at which time defendant in intervention was requested to and did shut down its plant for a period of two hours to allow its employees to attend a meeting for the purpose of considering the transfer of their affiliation to another labor organization;

b) learned further of said activities and the purpose thereof on July 30, 1945, through the distribution of leaflets in the plant and the holding of a general employees' meeting for which the plant was shut down;

c) learned further of said activities and the purpose thereof on July 31, 1945, during the course of an interview with officers of defendant in intervention concerning the reinstatement of the first

group of employees discharged, and by additional leaflets distributed in the plant;

d) learned further of said activities and the purpose thereof by the filing of a petition for representation by the AFL on August 3, 1945, and by the filing by the AFL, on August 13, 1945, of an unfair labor practice charge;

e) learned further of said activities and the purposes thereof by reports to defendant in intervention's production manager, as admitted by said production manager in his testimony;

f) learned further of said activities and the purposes thereof from leaflets distributed in the plant and posted on the plant bulletin board, on August 22, 1945;

g) learned further of said activities and the purposes thereof, and the inter-union controversy among the employees of defendant in intervention, by an interview on August 30, 1945, with a representative of the ILWU CIO, hereinafter called CIO.

VI.

That on the basis of the above, and other, evidence the National Labor Relations Board found the proof of knowledge on the part of defendant in intervention to be "overwhelming".

VII.

That said order of the National Labor Relations Board is legal and correct in all respects and does not compel defendant in intervention to interfere with the rights of its employees, contrary to the

provisions of the National Labor Relations Act, does not deprive either defendant in intervention or the CIO of property or property rights without due process of law, and does not make a judge of and punish defendant in intervention "for not performing its judicial functions and for failing to evaluate the evidence in a manner which would meet with the approval of the Board," but, rather, said order is based upon a finding, upon the evidence, that defendant in intervention made no bona fide effort to evaluate the evidence before it of its employees' activities and of the purpose of the CIO in requesting the discharge of the above-named individual plaintiffs.

Wherefore, plaintiffs in intervention pray that said petition to review be dismissed.

Dated at San Francisco, California, this 14th day of February, 1947.

TOBRINER & LAZARUS,
By /s/ MATHEY O. TOBRINER,
/s/ JONATHAN H. ROWELL,
Attorneys for Plaintiffs in
Intervention.

State of California,
City and County of San Francisco—ss.

Mathew O. Tobriner, being first duly sworn, deposes and says:

That he is one of the attorneys for intervenors herein; that he has read the foregoing Complaint in

Intervention and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those things that he believes it to be true; that he makes this verification on behalf of intervenors for the reason that there is no officer of intervenors in the City and County of San Francisco authorized to verify said Complaint.

/s/ MATHEW O. TOBRINER.

Subscribed and sworn to before me this 14th day of February, 1947.

[Seal] /s/ LOUIS WIENER,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed:] Filed Feb. 17, 1947.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY,
a corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

WAREHOUSE UNION LOCAL 6, INTERNA-
TIONAL LONGSHOREMEN'S & WARE-
HOUSEMEN'S UNION (CIO),

Plaintiff in Intervention.

COMPLAINT IN INTERVENTION OF WARE-
HOUSE UNION LOCAL 6, INTERNA-
TIONAL LONGSHOREMEN'S & WARE-
HOUSEMEN'S UNION (CIO)

Comes now Warehouse Union Local 6, Inter-
national Longshoremen's & Warehousemen's Union
(CIO), Plaintiff in intervention, hereinafter called
CIO, after leave of this Court first had and ob-
tained, and files this its complaint in intervention
and for cause of action and grounds for interven-
tion alleges:

I.

Plaintiff in intervention, CIO, is and at all times
herein mentioned was a labor organization within

the meaning of Section 2 (3) of the National Labor Relations Act, and for a number of years has been and now is the duly designated collective bargaining representative of the employees of petitioner Colgate-Palmolive-Peet Company at its Berkeley plant, having been certified as such by the National Labor Relations Board.

II.

On September 6, 1946, the National Labor Relations Board made and entered its order wherein, among other things, it ordered the reinstatement to petitioner's employ of Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Martin Heppler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca, and Edward Navarro.

III.

CIO is adversely effected by said order, and would be aggrieved by its enforcement by this Court, and said order is erroneous and unlawful in the following particulars:

1. The Order requires the reinstatement of certain employees who are not members in good standing of CIO and hence is in conflict with the

terms and provisions of a valid contract between petitioner and CIO requiring membership in CIO as a condition of employment by petitioner.

2. The individuals ordered reinstated formally resigned from CIO prior to their dismissal by petitioner, thereby forfeiting their status as members in good standing in CIO and disqualifying themselves for employment by petitioner.

3. Said individuals were duly suspended or expelled from membership in CIO for activities inimical to the welfare of CIO and violative of the constitution and laws of CIO, after a formal trial by a rank and file committee on due notice with opportunity to appear and defend against the charges.

4. Said Order requires the reinstatement of individuals who deliberately engaged in a strike during wartime, in violation of the solemn and binding no-strike pledge of CIO, and who thereby interfered with and obstructed the flow of vital war material to the armed forces.

5. Said Order is based on the unsupported finding that said individuals were disciplined by the CIO and deprived of employment by petitioners on account of their activities in behalf of the AFL.

6. That said Order is based on the unsupported finding that petitioner company had knowledge of reasons for CIO's disciplinary action other than the reasons set forth in paragraphs 3 and 4 hereof; that in fact petitioner company had no knowledge of any such other reasons, inasmuch as CIO's action was based solely on the grounds previously stated

herein, and not on any activities by said individuals in behalf of another labor organization.

7. Said Order is predicated upon the erroneous theory that where an employer has been officially notified of the suspension or expulsion of members of a labor organization, and has been duly furnished with the findings and decision of the trial committee indicating that due process of law was followed in disciplinary proceedings and that the grounds for disciplinary action were lawful and proper, the employer is nonetheless obligated to go behind such notice and probe into the internal affairs of the labor organization to determine whether the proceedings were sham or bona fide, whether the stated reasons are true, whether there are additional unstated reasons for the action taken, and similar matters in conflict with the employer's duty not to meddle with the internal affairs of labor organizations.

Wherefore, plaintiff in intervention, CIO, prays that the said final Order of the Board be set aside in whole.

Dated at Oakland, California, this 24th day of February, 1947.

EDISES, TREUHART &
CONDON,

By /s/ BERTRAM EDISES,
Attorneys for Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union, CIO.

State of California,
County of Alameda—ss.

Paul Heide, being first duly sworn, deposes and says:

That he is an official, to wit, Vice-President of Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), plaintiff in intervention herein; and is authorized to verify the said complaint; that he has read the foregoing complaint in intervention and knows the contents therein; that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those things that he believes it to be true.

PAUL HEIDE.

Subscribed and sworn to before me this 24th day of February, 1947.

[Seal] /s/ ELIZABETH WHITE,
Notary Public in and for the County of Alameda,
State of California.

[Affidavit of service by mail attached.]

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY
(a corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

INTERNATIONAL CHEMICAL WORKERS
UNION, A. F. OF L., CLYDE HAYNES,
DAVID LUCHSINGER, FRANK MAR-
SHALL, SANFORD MOREAU, HARRY
SMITH, EDWIN THOMPSON, HAROLD
LONNBERG, LINCOLN OLSEN, WIL-
LIAM SHERMAN, CALITTO RIGO, ROB-
ERT ASHWORTH, THOMAS AZEVEDO,
MANUEL MUNOZ, HENRY HELLBAUM,
NICK TATE, GLENN HIXSON, VINCENT
BARBONI, MARTIN HEPPELER, SEBAS-
TIAN RAMIREZ, ALDEN LEE, TERRY
ANDERSON, FELIX DENKOWSKI, MAN-
UEL SOUZA, HENRY GIANARELLI, AL-
BERT ZULAICA, ANN CERRATO, OPHE-
LIA REYES, WILLIAM HOWARD, KAY
NORRIS, INA PAIGE, CAETANO PER-
REIRA, ROSE ROS, GENEVIEVE YOUNG,
FRANK RICHMOND, MANUEL ALEGRE,

JOHN PERUCCA, & EDWARD NAVARRO,
Plaintiffs in Intervention,
vs.

COLGATE-PALMOLIVE-PEET COMPANY
(a corporation),
Defendant in Intervention.

ANSWER OF PETITIONER AND DEFEND-
ANT IN INTERVENTION, COLGATE-
PALMOLIVE-PEET COMPANY, A COR-
PORATION, TO COMPLAINT IN INTER-
VENTION OF INTERNATIONAL CHEMI-
CAL WORKERS UNION, A. F. OF L., ET
AL, PLAINTIFFS IN INTERVENTION.

To the Honorable, the Judges of the United States
Circuit Court of Appeals, for the Ninth Circuit:

Comes now the petitioner and defendant in inter-
vention, Colgate-Palmolive-Peet Company, a cor-
poration, and files its Answer to the Complaint in
Intervention of International Chemical Workers
Union, A. F. of L., Clyde Haynes, David Luch-
singer, Frank Marshall, Sanford Moreau, Harry
Smith, Edwin Thompson, Harold Lonnberg, Lin-
coln Olsen, William Sherman, Calitto Rigo, Robert
Ashworth, Thomas Azevedo, Manuel Munoz, Henry
Hellbaum, Nick Tate, Glenn Hixson, Vincent Bar-
boni, Martin Heppeler, Sebastian Ramirez, Alden
Lee, Terry Anderson, Felix Denowski, Manuel
Souza, Henry Gianarelli, Albert Zulaica, Ann
Cerrato, Ophelia Reyes, William Howard, Kay

Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca and Edward Navarro, and admits, denies and avers as follows:

1. Answering the allegations of Paragraph I of said Complaint in Intervention, the petitioner and defendant in intervention admits that the plaintiff in intervention, International Chemical Workers Union, A. F. of L., was at all times mentioned in said complaint a labor organization, as defined in the National Labor Relations Act. As to the allegation that said International Chemical Workers Union, A. F. of L. was the duly constituted representative of the individually named plaintiffs in intervention, petitioner and defendant in intervention avers that it is without knowledge or information to form a belief upon the subject matter of said allegation, and therefore, on that ground, denies, generally and specifically, each and every part thereof.

2. Answering the allegations of Paragraphs II and III of said Complaint in Intervention, the petitioner and defendant in intervention admits all the allegations contained in said Paragraphs II and III of said Complaint in Intervention.

3. Answering the allegations of Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph IV of said Complaint in Intervention.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the National Labor Relations Act, having been enacted for the sole and only purpose of furthering and protecting the public interest and not for the purpose of enforcing private rights, the plaintiffs in intervention herein are not parties aggrieved within the meaning of the Act, and therefore have no legal right to intervene herein.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the National Labor Relations Act gives no authority for any proceeding by a private person or group, or by any employee or group of employees to secure the enforcement of an order of the National Labor Relations Board, and that for this reason the plaintiffs in intervention are not entitled to intervene for the purpose of securing the enforcement of the order made herein by said National Labor Relations Board, and said Board is the exclusive authority to institute and prosecute proceedings for a decree of this Court enforcing an order of said Board.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the plaintiffs in intervention have no interest in the subject matter of the order made by the National Labor Relations Board herein or in the enforcement thereof until such time as this Honorable Court decrees its en-

forcement or denies such enforcement or modifies said order.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the intervention of said plaintiffs in intervention is premature, and that they have no right or interest cognizable by this Honorable Court or any other court until such time as this Court shall have made and entered its final order herein.

4. Answering the allegations of Paragraph V of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph V of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph V, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing, the stenographic transcript of testimony of the hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence amply demonstrate the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph V.

5. Answering the allegations of Paragraph VI of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph VI of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph VI, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing, the stenographic transcript of testimony of the hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence, amply demonstrates the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph VI.

6. Answering the allegations of Paragraph VII of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph VII of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph VII, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner

Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence amply demonstrates the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph V.

Wherefore, Petitioner prays that said Complaint in Intervention be dismissed.

Dated: San Francisco, California, February 28, 1947.

PHILIP S. EHRLICH,
BARTLEY C. CRUM,
R. J. HECHT,

Attorneys for Petitioner and
Defendant in Intervention.

State of California,
City and County of San Francisco—ss.

R. J. Hecht, being first duly sworn, deposes and says:

That he is one of the attorneys for Petitioner and Defendant in Intervention, Colgate-Palmolive-Peet Company, a corporation; that he has read the foregoing Answer to the Complaint in Intervention, and knows the contents thereof; the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those

matters he believes it to be true; he makes this verification on behalf of Petitioner and Defendant in Intervention for the reason that there is no officer thereof in the City and County of San Francisco, State of California, authorized to verify said Answer.

R. J. HECHT.

Subscribed and sworn to before me this 28th day of February, 1947.

[Seal] /s/ DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed March 1, 1947.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-C-1372

In the Matter of:
COLGATE-PALMOLIVE-PEET COMPANY
and
INTERNATIONAL CHEMICAL WORKERS
UNION, AFL.

San Francisco, California.

Monday, February 4, 1946.

Pursuant to notice, the above-entitled matter came on for hearing at 2:00 p.m.

Before: Horace A. Ruckel,
Trial Examiner.

Appearances:

Wallace E. Royster, 1095 Market Street, San Francisco, California, appearing on behalf of the National Labor Relations Board.

Mathew O. Tobriner and Jonathan H. Rowell, 1035 Russ Building, San Francisco, California, appearing on behalf of International Chemical Workers Union, AFL, Petitioner.

Gladstein, Anderson, Resner, Sawyer & Edises, by Bertram Edises, 1440 Broadway, Oakland, California, appearing on behalf of Warehouse Union, No. 6, International Longshoremen's and Warehousemen's Union, CIO, Intervenor.

R. J. Hecht and Bartley C. Crum, 2002 Russ Building, San Francisco, California, appearing on behalf of Colgate-Palmolive-Peet Company, Respondent. [2*]

PROCEEDINGS

Trial Examiner Ruckel: The hearing will be in order, please.

This is a hearing in the matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, AFL, Case No. 20-C-1372.

The Trial Examiner appearing for the Board is Horace A. Ruckel, R-u-c-k-e-l.

I have here the following appearances for the record:

Mr. Wallace E. Royster for the Board; Messrs. Gladstein, Anderson, Resner, Sawyer & Edises, by Bertram Edises, for Warehousemen's Union, Local 6, ILWU; Mr. Matthew O. Tobriner and Jonathan H. Rowell, appearing for United Chemical Workers Union.

Mr. Howell: That is the International Chemical Workers Union, sir.

Trial Examiner Ruckel: It is "United" down here.

Mr. Rowell: Is it? That is not right.

Trial Examiner Ruckel: The Petitioner; and for the Respondent, Mr. R. J. Hecht.

Mr. Hecht: And may it please the Examiner, Mr. Bartley C. Crum is also of record for the Respondent.

* Page numbering appearing at top of page of original Reporter's Transcript.

Trial Examiner Ruckel: Mr. Bartley C. Crum?

Mr. Hecht: Crum, yes.

Trial Examiner Ruckel: Are there any other appearances [4] which should be entered? (No response).

Just a few simple instructions to the parties.

An original and four copies of any pleadings filed during the course of the hearing should be filed with the Trial Examiner. It will not be necessary to take an exception to every adverse ruling, but an automatic exception will be allowed you, and upon appropriate motion and order an objection and exception may be permitted to stand to an entire line of testimony.

At the conclusion of the hearing the parties may, if they wish, request time of the Trial Examiner within which to file briefs, and upon request being made the Trial Examiner will indicate the time.

The parties may also, if they wish, argue orally before the Trial Examiner.

Are there any motions at this time by any of the parties?

Mr. Hecht: Mr. Examiner, I don't know whether this is a motion exactly, but we filed our answer within the time allowed. However, unfortunately the authorized officer of the company did execute the affidavit called for by the rules but did not sign elsewhere the answer.

So may we have the answer to allow him to sign it where indicated and return it tomorrow to be considered filed, as having been filed January 31, 1946? [5]

Trial Examiner Ruckel: It may be so considered. Do you have the formal pleadings, Mr. Royster?

Mr. Royster: Yes, Mr. Examiner.

I offer as Board's Exhibit 1(a) the Second Amended Charge in this proceeding, a writing which consists of two pages;

As Board's Exhibit 1(b) the Complaint;

As Board's Exhibit 1(c) Notice of Hearing;

Board's Exhibit 1(d) an Affidavit of Service of Notice of Hearing and Complaint;

Board's Exhibit 1(e) a Request for an Order Extending Time to Answer Complaint, filed by the Respondent; and

Board's Exhibit 1(f) the Order Extending Respondent's Time Within Which to Answer.

I believe also that I shall offer as Board's Exhibit 1(g) the Answer filed in this proceeding by the Respondent on January 31. And he may make arrangements, I assume, to have the signature affixed thereto.

Mr. Hecht: Yes.

(Thereupon, the documents above referred to were marked Board's Exhibits Nos. 1(a) through 1(g), inclusive, for identification.

Trial Examiner Ruckel: Any objection to the offering of the Board?

(No response.) [6]

Without objection, Board's Exhibit 1 may be received in evidence.

(Thereupon, the documents heretofore marked Board's Exhibits Nos. 1(a) through

1(g), inclusive, for identification, were received in evidence.)

Trial Examiner Ruckel: Do you have any other formal papers to file, Mr. Royster?

Mr. Royster: No, Mr. Examiner, I do not.

Trial Examiner Ruckel: I haven't had an opportunity to read the Answer. We will recess for five minutes to permit me to read the Answer of the respondent.

(A short recess was taken.)

Trial Examiner Ruckel: The hearing will convene, please.

Before we call the first witness is there any other motion by any of the parties?

Mr. Edises: Mr. Trial Examiner, I represent the International Longshoremen's and Warehousemen's Union, Local 6, and while we are, I believe, named in the Complaint and also in the charge, we have not filed a formal motion to intervene.

Is such a motion desired by the Trial Examiner, or will our appearance be sufficient without such formal intervention?

Mr. Rowell: Well, Mr. Examiner, I wish to enter a [7] formal objection to allowing intervention by the CIO Union, either orally or in writing.

I believe you have read the formal exhibits in the case, and the case involves only a charge by the charging union against the respondent company, which is now being prosecuted by the Labor Board. I fail to see that the International Longshoremen's & Warehousemen's Union has any interest or right

in the case at all. It will extend the hearing, it will exceedingly complicate the possibilities of settlement, and I think there may be some possibility of settlement between the Company and the charging union and the Labor Board. And the intervention of the CIO, if only for the purpose of being able to cross examine the witnesses, would, of course, not be objectionable, but if they are going to be one of the formal parties to the case the case will be extremely long drawn out, and it will be impossible to settle it. Likewise, I think they have no right to appear when the sole charge is against the company.

Mr. Edises: I would like to say in reply to what Mr. Rowell has said, Mr. Examiner, that the evidence will show that the dismissals of the employees involved here were pursuant to a closed-shop contract between the company and the International Longshoremen's & Warehousemen's Union, Local 6.

In the event a formal motion to intervene is required, [8] we will file one, and it will allege the existence of this contract to which we are now parties, and which is presently in force.

Any relief granted the charging union would, of course, involve both the enforcement and validity of our contract to which we are a party. So for that reason alone we have a substantial interest in appearing and intervening in this case.

I regret the fact that Mr. Rowell apparently feels that settlement would be rendered more difficult by our presence. Nevertheless, we do intend to appear.

Mr. Royster: Well, Mr. Examiner, the Board

also opposes the intervention of the ILWU in this proceeding. The complaint does not attack the contract which the ILWU allegedly is party to with the company. Under the terms of the complaint no order of the Board could issue which would attack that contract, or render it in any wise inoperative. The fact that a contract does exist is set forth affirmatively in the company's answer, and whatever defense to the company's actions that contract may constitute is a matter for the company to raise and to show by way of evidence.

I don't believe that the ILWU is a proper or a necessary party to this proceeding.

Mr. Hecht: Mr. Examiner, to the contrary, I believe that the ILWU is a necessary party to this controversy. [9] The effect of an order made by the Board reinstating these men to their employment would be, in fact, a violation of the contract which we have affirmatively pleaded in our Answer, and if we were to reinstate these men pursuant to the of this court, I mean this Board, (pardon me), we would find ourselves faced with a lawsuit in the County of Alameda and the Superior Court asking for the specific enforcement of this contract, or for damages. And I believe no controversy involving this contract can be settled without the necessary presence of the representatives of the ILWU.

Mr. Edises: May I add in addition, in the Cowell Cement Company-Portland case the Board was reversed by the Circuit Court of Appeals for doing that very thing, refusing participation to a party to a contract subject to which certain discharges

took place, and that case was then retried by the Board, in spite of the fact that months had intervened, in fact, years had gone by. And I certainly don't want to put the Board to that necessity in this case.

Mr. Royster: Well, I appreciate Mr. Edises' concern for the Board. However, the fact is that in the Cowell case the situation was clearly distinguishable. The Cowell case consisted of 8(1) 8(3) and 8(5).

The gravamen of the charge, of the Complaint, I should say, was that the company unlawfully was refusing to bargain [10] with the charging union, and also as a part of its plan to refuse to bargain had entered into a closed-shop with another union. It is true that the Board erroneously failed to name the contracting union in its complaint, and for that reason the enforcement failed initially, and upon an amended charge and complaint a subsequent hearing was held at which time the contracting union was made a party to the proceeding and a final result obtained.

It is different here. There is no attack upon the ILWU contract, we are not trying to set it aside, we don't say it is invalid. We merely say that the company performed certain acts which are in violation of the National Relations Act, namely, that they discharged certain employees because of their union activities.

Mr. Hecht: Mr. Royster, do you maintain——

Trial Examiner Ruckel: Well, it does affect their contract.

Mr. Royster: Well, it affects the contract perhaps to the extent that any statute affects a contract, Mr. Examiner. They are all made in the light of the existing statutes and of the power of the government to pass other statutes which may affect the rights of the parties.

Trial Examiner Ruckel: Well, it affects a little more closely than that.

What was the situation in the Rutland Court case, do [11] you recall?

Mr. Royster: Well, the Rutland Court case, there a contract, if I recall it correctly, was sought to be set aside by the Board. It was a contract that had been entered into at or about the time of, or just prior to the discharge of the alleged 8(3's). It was a contract which succeeded one which had been in effect for about a year.

Trial Examiner Ruckel: And for that reason your contention would be that both parties were joined?

Mr. Royster: Yes.

Trial Examiner Ruckel: Of course, counsel for the petitioning union stated that he has no objection to the Longshoremen's Union participating in the hearing, and, of course, they are entitled to do that. Their appearance is on file. I am not quite clear, if they would have the privilege of participating in the examination of witnesses, how it would take any more time if they were joined as parties. I don't think it follows they would take more time than they otherwise would.

Can you clear me up on that, sir?

Mr. Rowell: Well, that may be so in one way, your Honor, except that the issues would be more limited. If the CIO is privileged to call its own witnesses, and to go into issues which are not germane to the proceeding as it stands now, the proceeding will be drawn out. [12]

The point that I am urging strongly, however, is that I feel that this case can be settled rather quickly if it is formally ruled that the CIO has no interest in this proceeding, and that the order sought here, namely, reinstatement with back pay of these individuals has nothing to do with the union at all, with the CIO union, but is a matter between the parties and the company.

Mr. Hecht: May I dispel that, Mr. Examiner? The company will not even attempt thinking of a settlement if the intervening union is not granted its motion because the company would be bound and the intervening union would not be bound by any settlement or order of this Board if they are not permitted to intervene.

Mr. Rowell: Well, that is a question of law that we haven't looked up yet, Mr. Hecht.

Mr. Edises: It occurs to me that Mr. Rowell's motion is based on what might be called a point of expediency. I, of course, would like to see a settlement of any case, but a settlement is not the most important thing. The important thing in a case of this kind, or any other case, is that the determination be on sound, legal grounds. I think we are entitled to have our day in court.

Mr. Royster: Mr. Examiner, just one more point, and that is this: In the event the ILWU is permitted to intervene here, I think that the intervention should at least be limited [13] so that it may offer evidence or examine on matters which affect its interest. I don't believe that the ILWU should be permitted to intervene to supplement the company's defense, for example.

Trial Examiner Ruckel: Oh, well, no. I think that would stand to reason, I mean in this hearing, regardless of what their interests might be otherwise, in this hearing the interest of the respondent and the interest of the CIO union are similar, if not identical. The evidence that would affect one would affect the other. I would anticipate that if the CIO were permitted to intervene that it would be to protect the record primarily and not with the expectation that they would call witnesses which otherwise would not be called, because a company witness in this case is, by reason of the situation, a CIO witness also.

Mr. Edises: Well, we would have to respectfully dissent from that, Mr. Trial Examiner. We cannot accept the position at all that the company's presentation of its case would thereby establish the position of the ILWU. We, it is true, are parties to a contract with the company, but we are a bona fide labor organization dealing at arm's length with the company in matters of collective bargaining.

Trial Examiner Ruckel: I was careful to say in this instance by reason of the contract your interests

in, shall we say, defeating the complaint brought by the Board are [14] similar?

Mr. Edises: Yes, but I hope I don't understand you to mean that we are to be precluded from pursuing any relevant line of defense simply because it doesn't happen to conform to the company's own pattern, or because the matter may have been touched on in some degree in the company's own presentation. That would be foreclosing us of our right.

Trial Examiner Ruckel: I said I would expect that the witnesses called by one would not be duplicated by witnesses called by the other. Of course, if you are made a party to the case it is an empty gesture if you are not permitted to enter testimony and evidence in your own behalf.

Mr. Edises: I am sorry. I misunderstood you.

Trial Examiner Ruckel: But I would expect that it would be reduced to a minimum rather than a maximum.

Mr. Edises: Well, I accept that formulation.

Trial Examiner Ruckel: If the company has adequately established a point by calling one witness I wouldn't expect you to reestablish the point by calling an additional witness.

Mr. Edises: Well, that is quite agreeable. I certainly accept that.

Mr. Hecht: That is agreeable.

Trial Examiner Ruckel: I am not quite clear, gentlemen, how the admission of the CIO could take more time than [15] it would otherwise take. I admit that the statement that there might be a

chance of settling the case is always very appealing to the Trial Examiner, particularly one far away from headquarters. It seems to me that the time taken would be little, if any more, than would be taken anyway in participation of cross examination of witnesses. I am afraid that the case might be prejudiced, not merely prejudiced to the CIO but prejudiced to the other parties unless the CIO were permitted to intervene as a party in the case.

I am aware, now that counsel has refreshed my memory, that the two other cases mentioned were cases which affected directly the contract held by the competing labor organization in the plant. This contract is not affected directly but it is affected indirectly, it seems to me, that is, the effect upon the contract could be very substantial if the Board were to make a certain kind of order.

If the ILWU will prepare a petition to intervene I have indicated that I think it should be granted. It will not be necessary to do that before tomorrow. In the meantime your rights will not be prejudiced.

Mr. Edises: That will be satisfactory.

Trial Examiner Ruckel: Are there any other motions by the parties?

(No response.)

Call the first witness, Mr. Royster, for the Board.

Mr. Royster: Oh, Mr. Examiner, before I call a witness I would like to read a proposed stipulation.

Trial Examiner Ruckel: Yes.

Mr. Royster: The answer of the company admits the allegation of the complaint with respect to commerce. However, I would like to expand that just a little bit by adding a few figures, and I propose this stipulation: That Colgate-Palmolive-Peet Company is a Delaware corporation having its central office in Jersey City, New Jersey. It operates plants in Jersey City, New Jersey; Brooklyn, New York (a subsidiary); Jeffersonville, Indiana; Kansas City, Kansas, and Berkeley, California, where it is engaged in the manufacture and sale of soap and glycerin.

During 1944 the gross sales of the company at its Berkeley plant, the only plant involved in this proceeding, were in excess of \$1,000,000, and the total sales to customers located outside the State of California amounted to more than 25 per cent of the gross sales.

During the same period raw materials having a value in excess of \$1,000,000 were used at the Berkeley plant, of which more than 25 per cent was obtained from points outside the State of California.

Mr. Hecht: It is so stipulated.

Mr. Royster: So stipulated for the Board.

Trial Examiner Ruckel: The record may so show. [17]

Are there any other stipulations?

Mr. Royster: Yes, Mr. Examiner.

I propose this stipulation to the parties: That International Chemical Workers Union, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees

of the company, and is a labor organization within the meaning of Section 2, Subdivision 5, of the Act.

Mr. Rowell: So stipulated.

Mr. Edises: We will so stipulate.

Mr. Hecht: So stipulated.

Trial Examiner Ruckel: Does the company and respondent stipulate also?

Mr. Hecht: Yes.

Mr. Royster: I propose further by way of stipulation that Warehousemen's Union, Local 6, International Longshoremen's & Warehousemen's Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the company and is a labor organization within the meaning of Section 2, Subsection 5, of the Act.

Mr. Rowell: We will stipulate to that.

Mr. Edises: So stipulated.

Mr. Hecht: So stipulated.

Mr. Royster: That is all the stipulations I have. [18]

Mr. Hecht: Mr. Royster, might it be stipulated too that the local of the ILWU who presently has a collective bargaining agreement with the respondent is not in any sense of the word, as used by the Board in its decision, a company-dominated union?

Mr. Rowell: Well, I don't think that it is within the issues of the case.

Mr. Edises: I don't think it is necessary to so stipulate. It is an affiliate of the International Longshoremen's & Warehousemen's Union and of the CIO.

Mr. Royster: There is no contention to that effect.

Mr. Hecht: There is no contention of any domination?

Mr. Royster: No, sir.

Mr. Hecht: That is fine. That is all I want.

Trial Examiner Ruckel: Are there any further suggested stipulations?

Mr. Royster: I have no further stipulations.

Trial Examiner Ruckel: Call the first witness.

Mr. Royster: Mr. Wood.

Mr. Edises: Mr. Examiner, I would like to object to the calling of this witness, at least at the present time. I presume that since he is a representative of the defendant, an officer of the defendant company, he would be called in the nature of an adverse witness under something similar to a state procedure which entitles a party to call an adverse [19] witness. However, it seems to me that the better practice is to require the plaintiff, or the moving party, to first present such testimony as he may have through his own witnesses rather than proceeding through adverse witnesses. And I know that that is the practice which is followed by many courts.

I would propose for that reason that the Board be required before questioning this defendant to proceed affirmatively in the presentation of its own case.

Trial Examiner Ruckel: Well, I don't think there can be any objection to the Board calling anybody it wants to as its own witness, including an

official of the Company. I have no idea what the nature of the examination may be. It may merely be a stereotype question as to the physical set-up of the plant and so on. I think there can be no possible objection. Anyway, I think the objection should be made to a particular question and the materiality of the concrete question and not to the procedure.

Objection overruled.

CHARLES WOOD,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name, please?

A. Charles Wood. [20]

Q. And where do you live, Mr. Wood?

A. 9 West Parnassus Court in Berkeley.

Q. What is your occupation?

A. Purchasing Agent for the Colgate-Palmolive-Peet Company at Berkeley.

Q. And will you give us a brief description of your duties?

A. Well, I buy the material. What you want is that I handle the labor relations? That is what you are looking for, I suppose?

Q. Is it true that you handle the labor relations?

A. I handle the labor relations. I handle them in the Purchasing Department.

(Testimony of Charles Wood.)

Q. Mr. Wood, do you know Mr. Railey, an officer of the Company? A. Yes, sir.

Q. Can you tell us what his position is with the Company?

A. He is Vice President of the Company, in charge of the operations and all business of the Western Division, which includes Kansas City and Berkeley.

Q. Will you give us his initials, please?

A. B. W. Railey.

Q. And do you know a Cecil Carter?

A. Yes.

Q. Will you tell us if he is an employee of the Company?

A. He is what we call a Supervisor. That is comparable to [21] an Assistant Superintendent. He has charge of a part of the plant under the Superintendent.

Q. Does he exercise authority over employees of the Company? A. He does.

Q. In what respect?

A. Well, through the foremen. He does very little with the employees directly, as a general thing.

Q. Does he have authority to promote employees?

A. Well, since the Union came in authority has been somewhat curtailed. When anybody is promoted, why, an argument generally ensues as to who should get the job and so forth, and it is generally settled in the Grievance Committee.

(Testimony of Charles Wood.)

Q. Would that be true also as to discharges?

A. Yes.

Q. Demotions? A. Yes, sir.

Q. Does the Company look to Mr. Carter to make recommendations in such matters?

A. It does.

Q. Now, will you identify a Mr. Altman for me?

A. He is the Superintendent.

Q. And what is his first name?

A. Clifford A. Altman.

Q. And a Mr. Stanberry?

A. His position is comparable to Mr. Carter's, only he [22] doesn't have charge of the same part of the business.

Q. And what is his first name?

A. Don Stanberry.

Q. And Charles Grube?

A. He is foreman of a small department that handles what we call the framing of the soap, that is, the hot soap is poured into big boxes and then the outside stripped off of it before it is sent to be cut into cakes.

Q. Is he what the Company would describe as a working foreman?

A. Well, he is—I would say that he was a cross between a working foreman and a non-working foreman.

Q. About how many employees work in his department?

A. I would have to refer to my notes if we are going all through this.

(Testimony of Charles Wood.)

Q. Could you do that conveniently now?

A. We have got it here already.

(Examining document.) Now, these are the employees that were with us on July 30, 1945, the day that the difficulties began.

There is 16.

Q. To whom is Mr. Grube responsible?

A. Mr. Carter.

Q. To Mr. Carter. Is it part of Mr. Grube's responsibility to make recommendations with respect to the employees who work in his department? [23]

A. Well, yes, the same as any foreman.

Q. Yes.

A. Which may or may not be followed out.

Q. With respect to Mr. Mason, do you know a man of that name?

A. Yes, of course I do. He is Foreman of the Toilet Soap Department.

Q. What is his first name?

A. William Mason.

Q. Does he have any assistant foremen or working foremen under him?

A. He has two foremen under him; two assistant foremen I should say.

Q. Now, Mr. Wood, I show you a writing dated August 20, 1945, and ask you if you can identify it?

A. (Examining document): Yes.

Mr. Edises: May we see it, please?

Mr. Royster: Sure. I am not going to offer it right now.

Q. (By Mr. Royster): Without telling me any-

(Testimony of Charles Wood.)

thing of the content part of the letter, will you tell me what it is?

A. Well, it is a letter I wrote to Mr. Crum at the time we received a letter from the National Labor Relations Board.

Q. And was that letter sent on or about the date it bears? A. I should think so, yes.

Mr. Royster: Very well. Will the Reporter mark this [24] as Board's Exhibit No. 2 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 2 for identification.)

Mr. Royster: I believe that is all, Mr. Wood.

Trial Examiner Ruckel: Cross-examine.

Mr. Rowell: Well, might I ask just one question? I presume it might be part of the direct.

Trial Examiner Ruckel: Yes.

Q. (By Mr. Rowell): Does Mr. Grube have a foreman or an assistant foreman that works under him?

A. No, it is a very small department.

Q. Who is Mr. Ed Bopp? Does he work under him?

A. He is a gang leader in that department.

Q. He works under Mr. Grube?

A. Yes, sir.

Mr. Rowell: That is all.

(Testimony of Charles Wood.)

Cross-Examination

By Mr. Hecht:

Q. Just one question, Mr. Wood.

Mr. Grube is a member of the CIO Union in the complaint? A. Yes.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Mr. Royster: In view of Mr. Hecht's questions I have this:

Redirect Examination

By Mr. Royster:

Q. Do other foremen at the plant belong [25] to the CIO Union?

A. We think so. We have never questioned them with respect to it.

Q. You are sure of Mr. Grube, though?

A. Yes.

Mr. Royster: That is all.

(Witness excused.)

Mr. Royster: Frank Marshall.

FRANK MARSHALL,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

Mr. Edises: Could I ask that the questioning

(Testimony of Frank Marshall.)

be held up for just a moment? I haven't had a chance to examine this statement.

Trial Examiner Ruckel: Will you have an objection to the exhibit?

Mr. Edises: I don't know. I haven't had a chance to examine it yet.

Mr. Hecht: We will have an objection.

Trial Examiner Ruckel: I haven't admitted it yet. I wonder if you might reserve examination of it until our recess, which we will have in 10 minutes or so. [26]

Mr. Edises: All right.

Q. (By Mr. Royster): What is your name?

A. Frank Marshall.

Q. Where do you live, Mr. Marshall?

A. Walnut Creek.

Q. And what is your occupation?

A. Now, or——

Q. Yes.

A. I work for the Shell Chemical Company, in the Shipping Platform.

Q. Were you employed by the Colgate-Palmolive-Peet Company? A. I was.

Q. For what period?

A. From October 28, 1928, to July 30, 1945.

Q. Were you a member of the ILWU?

A. I was.

Q. For what period?

A. From August, 1936, until July 30, I presume.

Q. Of 1945? A. 1945.

Q. You stated that you were a member of the

(Testimony of Frank Marshall.)

ILWU from sometime in 1936 until July 30, 1945?

A. That is right.

Q. Was the labor organization known by any different name during that period? [27]

A. Yes, it originally was the—I originally joined the ILA, and AF of L organization, in 1936. Later it was changed to the ILWU, CIO.

Q. Do you recall about when that change came?

A. 1938, I believe. I am not sure on the date.

Q. Have you held any office in the ILWU?

A. I did.

Q. What office?

A. Chairman of the Steward's Council.

Q. Where?

A. In the ILWU for the year of 1944.

Mr. Hecht: May I have that date again, please?

The Witness: For the year of 1944.

Q. (By Mr. Royster): Well, you state you were Chairman of the Steward's Council. Of what was that Council composed?

A. That Council was composed of the members—of Stewards who were members throughout the whole warehouse industry controlled by the CIO.

Q. It was not confined merely to the Stewards of the Colgate-Palmolive-Peet Company?

A. No; that was the entire local.

Q. How did you get that office?

A. I was elected by the—yes, I was elected in December of 1943 by the members of the Stewards' Council at that time.

(Testimony of Frank Marshall.)

Q. And is it your testimony that you served in that [28] capacity for the year of 1944?

A. That is correct.

Q. Now, do you know B. W. Railey?

A. I do.

Q. There has been testimony that he was Vice President, or is Vice President of the Respondent.

Did you have a conversation with Mr. Railey in July, 1945? A. I did.

Mr. Hecht: Mr. Royster, I think it will conserve a little time if you will have the witness specify the time, place, persons present.

Mr. Royster: I can't do that, Mr. Hecht, without asking the questions and you certainly have anticipated me.

Mr. Hecht: Yes.

Q. (By Mr. Royster): Will you state as nearly as you can the date in July 1945 when this conversation took place?

A. It was approximately July 20th.

Q. And where did it take place?

A. It was just outside of the shipping office, what is known as "L" Building of Colgate-Palmolive-Peet Company, Berkeley.

Q. And who was present?

A. Just Mr. Railey and myself.

Q. And what was the conversation?

A. I asked him if the contract of the Union was to be signed [29] that the Stewards of Colgate-Palmolive-Peet be present, and he asked me why,

(Testimony of Frank Marshall.)

and I said that we expected some trouble to arise at that time. And he said he would.

Q. Now, what contract have you reference to?

A. The contract with the ILWU, Warehousemen.

Q. Do you know of a meeting of Respondent's employees on July 26, 1945? A. I do.

Q. Was such a meeting held? A. It was.

Q. Where was it held?

A. Pete's Rendezvous, Third and Broadway, Oakland.

Q. Who arranged this meeting?

A. William Sherman.

Q. Do you know what the purpose of the meeting was?

A. It was to discuss working conditions, and a general discussion of the plant conditions at Peet's, Colgate-Palmolive-Peet.

Q. Who attended the meeting?

A. Members—employees of Colgate-Palmolive-Peet.

Q. Did you attend? A. I did.

Q. Can you state about how many other employees attended?

A. About 28 to 30, somewhere in that neighborhood.

Q. How did the employees who attended this meeting know [30] that it was to be held, if you know, how they found that out?

A. Well, it was just passed by word of mouth, and a few of the members got together—they had

(Testimony of Frank Marshall.)

on different occasions before—got together for a dinner.

Q. Did you invite anyone to attend?

A. Yes, I did.

Q. Did you discuss this meeting with any labor organization, that is, before it was held?

A. Before it was held?

Q. Yes. A. Yes.

Q. With whom?

A. Officers of District 50, the Mineworkers Union, UMW.

Q. Well, tell us what happened at the meeting, this meeting of July 26?

A. We spoke of—we discussed working conditions at the plant and made arrangements at that time to hold a meeting where all employees who wished to could attend at a later date.

Q. Do you know Harold Lonnberg?

A. I do.

Q. Did he attend this meeting of July 26?

A. He did.

Q. Do you know Clyde Haynes? A. I do.

Q. Did he attend the meeting of July 26?

A. He did.

Q. Do you know David Luchsinger?

A. Yes.

Q. Did he attend this meeting? A. Yes.

Q. Do you know William Sherman?

A. Yes.

Q. Did he attend this meeting? A. Yes.

(Testimony of Frank Marshall.)

Q. Do you know Edwin Thompson?

A. Yes.

Q. Did he attend this meeting? A. Yes.

Q. Now, you say that there was a decision reached at this meeting that a subsequent meeting be called? A. Yes.

Q. Was the purpose of this second meeting decided? A. Yes.

Q. Will you tell us what it was?

A. Well, it was decided that this second meeting would be for anyone who wanted to attend, that is, any member of Colgate-Palmolive-Peet, shall we say, employees of Colgate-Palmolive-Peet. The first meeting was very small, as I stated before. [32]

Q. Was there any decision reached at the July 26 meeting with respect to any question to be put to the employees at the second meeting?

A. I don't remember that.

Q. Now, was there a subsequent meeting held?

A. A later meeting.

Q. Yes. A. Yes, on July 30, 1945.

Q. Now, were employees advised that this meeting of July 30 would be held? A. Yes.

Q. How were they advised?

A. By notices posted around the plant.

Q. And did you see any of those notices?

A. Yes.

Q. Can you tell us where they were posted?

A. They were posted on the three time clocks, one in "A" building, one in "L" building, and one

(Testimony of Frank Marshall.)

in the "TA" warehouse, the toilet article workers warehouse.

Q. Now, with respect to the bulleting board in "A" building, can you tell us where that is situated?

A. It is directly over the time clock through which all the hourly employees pass by twice a day; at least once a day.

Q. How is it situated with respect to any of the company's [33] offices?

A. It is within 30 feet of the exit, I would say, of Mr. Altman's office, and all the officers are in this area in the "A" building.

Q. What is Mr. Altman's position at the plant?

A. Plant Superintendent.

Q. Did you post any of these notices?

A. I did.

Q. When did you post them?

A. At quarter to one on July 28th, which was a Saturday, 1945.

Q. Were you in Mr. Railey's office on July 30th?

A. Not Mr. Railey's office, no.

Q. Were you in any other of the Company's offices? A. Yes, Mr. Altman's office.

Q. Mr. Altman's office? A. Yes.

Q. That was on July 30th. About what time of day? A. About two p.m.

Q. And who else was there?

A. Mr. Altman and Mr. Railey, Mr. Heide, Mr. Duarte.

(Testimony of Frank Marshall.)

Q. Can you tell me who Mr. Heide and Mr. Duarte are?

A. Mr. Heide is the second Vice President of the Warehouse Union; Mr. Duarte is Business Agent. Mr. Gonick is Business Agent, and Mr. Gleichman, I don't know what he is. [34]

Q. Was Mr. Luchsinger there?

A. Yes. Oh, yes. The five Stewards were there, too; Mr. Luchsinger, Mr. Smith, Mr. Marshall (myself), Mr. Clyde Haynes, and Sanford Moreau.

Q. Well, did you have a conversation?

A. Yes. We were—Mr. Riley told us that there was some union trouble and that he would have to let us go until such time as we were straightened out with the union. At that time we were handed——

Trial Examiner Ruckel: Now, what do you mean by "us." You say "us."

The Witness: The five Stewards.

Trial Examiner Ruckel: The Stewards present?

The Witness: Yes, the five Stewards present which I named.

We were then handed copies by the officials of the Warehouse Union stating that there were charges against us, that we were no longer in good standing with the Union, and we would have to be—or we would have to stand trial, or something of that nature.

Trial Examiner Ruckel: Who handed those to you?

The Witness: Mr. Duarte.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Who is he?

The Witness: An official of—Business Agent of ILWU.

Q. (By Mr. Royster): Well, did you say anything? [35]

A. No, no.

Q. Was there any conversation about a contract?

A. There was by Mr. Duarte, Business Agent for the ILWU, stating that we were out of good standing with the Union and that they were upholding the contract.

Mr. Railey did most of the speaking, telling us that he would have to leave us go.

Trial Examiner Ruckel: What was his whole conversation so far as you can recall?

The Witness: Well, his conversation was based on the conversation that he had previously with the officials of the Union where they pointed out that——

Trial Examiner Ruckel: You mean he said that, he said that he had a conversation with officials of the Union?

The Witness: That is right.

Trial Examiner Ruckel: And that they had pointed out——

The Witness: That they had pointed out that we were out of good standing with the Union, and due to terms of the contract, why, they had to leave us go.

Trial Examiner Ruckel: Did he say when he had had that conversation?

(Testimony of Frank Marshall.)

The Witness: It was just prior to our entering there.

Trial Examiner Ruckel: Did he say so?

The Witness: Prior to 2 P.M.

Trial Examiner Ruckel: Did he say so? [36]

The Witness: I am pretty sure he mentioned that.

Q. (By Mr. Royster): Well, what did you do after that, Mr. Marshall?

A. We left Mr. Altman's office and went over to the smoking room.

Q. Now, when you say "we," to whom do you refer?

A. I am referring to the five Stewards.

Q. Whose names you have stated?

A. Whose names I have mentioned. We went to the smoking room, which is in the other building, called "L" building, and sat down and discussed the situation.

Q. Now, this conversation and occurrence in Mr. Altman's office took place on July 30, did you testify?

A. That is correct.

Q. Now, did you attend a meeting on that day?

A. Yes.

Q. And where was that meeting held?

A. It was held at the Finnish Brotherhood Hall.

Q. In Berkeley?

A. On Chestnut Street, Berkeley.

Q. And where is that with relation to the Company's Plant?

(Testimony of Frank Marshall.)

A. Approximately a mile and a half from the plant.

Q. What time of day was this meeting held?

A. 4:15 P.M.

Q. Is this the meeting to which the notice which you posted [37] on July 28th referred?

A. That is correct.

Q. By whom was it attended?

A. It was attended by approximately 270 members or employees of Colgate-Palmolive-Peet.

Q. Well, will you tell us what took place at this meeting?

A. The membership elected four officials from that body to represent them and to return to Colgate-Palmolive-Peet the following day and try to establish the Stewards back on the job, the five Stewards.

Q. Do you recall the names of the four who were elected?

A. Lincoln Olsen, William Sherman, Harold Lonnberg, and Edwin Thompson.

Q. Was there any action taken at this meeting with respect to the ILWU?

A. Yes, there was.

Q. And what was the action?

A. That we break relations with the ILWU, and that we form the Employees Welfare Association as a temporary organization to handle our business for us, and seek affiliation with some other strong international.

Q. Now, when you say "Employees Welfare As-

(Testimony of Frank Marshall.)

sociation'' are you referring to Colgate-Palmolive-Peet Employees Welfare Association?

A. No. [38]

Q. Will you state the purpose of the Employees Welfare Association?

Mr. Edises: I will object to that on the ground that if it is the kind of association that its name imports there must be some document, some charter, constitution, or other document which would set forth its purposes, and which would be the best evidence of those purposes.

Trial Examiner Ruckel: Well, let's find out if there were any.

Did you ever adopt a constitution?

The Witness: No.

Trial Examiner Ruckel: Or by-laws?

The Witness: No.

Trial Examiner Ruckel: No by-laws?

The Witness: No.

Trial Examiner Ruckel: You were never chartered, I suppose, by the State?

The Witness: No; it was just a temporary organization.

Trial Examiner Ruckel: Just an association?

The Witness: Just an association.

Mr. Edises: May I add to my objection that if that is the case then this witness has not been qualified. There has been no foundation to show that he is in a position to indicate the purposes of the association.

Trial Examiner Ruckel: Well, he was one of

(Testimony of Frank Marshall.)

these people [39] present at this meeting. He can give us the purpose of the organization as he understands it.

Mr. Edises: Mr. Examiner, I don't want to be technical, but it seems to me the question ought to go to whether there was any official action taken or any resolution. Otherwise it is just a statement of this witness as to what he believes the purposes of the association were.

Trial Examiner Ruckel: You may proceed.

Mr. Royster: Well, I can ask him that question, Mr. Edises.

Q. (By Mr. Royster): Was there any action taken by the persons who attended this meeting on July 30 with respect to the Employees Welfare Association? Just was there any such action?

A. Yes, there was.

Q. And what was the action?

A. Well, the action was that we break relations with ILWU.

Trial Examiner Ruckel: Well, was there a resolution proposed to that effect from the floor?

The Witness: From the floor, yes.

Mr. Hecht: Mr. Royster, I would like to know who the witness means when he refers to "we."

Mr. Royster: Well, I didn't get the "we" the last time, Mr. Hecht.

Mr. Hecht: Yes. He went on to say, "we" decided to [40] break relations with the ILWU.

Mr. Royster: Well, I assume——

The Witness: When I say "we" (if I may in-

(Testimony of Frank Marshall.)

interrupt)—when I say “we” I mean the Employees Welfare Association.

Q. (By Mr. Royster): Are you talking about the people who attended this meeting on July 30th?

A. I am; that is right.

Q. I believe you had started to testify that in response to or acting upon a resolution which had been proposed to the floor you voted to withdraw from the ILWU.

Is that correct? A. That is correct.

Q. And the further action I don't believe you have stated.

A. Well, the first resolution was to withdraw from the ILWU.

Q. Now, was that put to a vote?

A. That was put to a vote.

Q. What was the result of that vote, if you know?

A. That was a unanimous vote to withdraw.

Q. All right.

A. The second was to elect officials, temporary officials. They were elected. I stated their names.

Q. Well, now, you stated the names of four individuals, who, if I understood your testimony correctly, were to go to the Company and seek the reinstatement of the Stewards.

A. That is correct. [41]

Q. All right. Now, was there a resolution with respect to Employees Welfare Association?

A. Yes, there was.

Q. And how was that proposed?

(Testimony of Frank Marshall.)

A. That was by one of the members who attended the meeting, one of the members—one of the employees of Colgate-Palmolive-Peet.

Q. Proposed a resolution?

A. Proposed a resolution.

Q. And what was the resolution?

A. So as not to confuse it, the first resolution came from the floor to break relations with ILWU. The second proposal was to form the Employees Welfare Association. It was advertised as such on the notices put up in the plant.

Q. Now, was the second resolution put to a vote?

A. It was.

Q. Do you know the result of that vote?

A. It was a unanimous vote.

Q. In what respect was it unanimous, for or against the formation?

A. A unanimous vote for forming the Employees Welfare Association.

Q. Now, what is the purpose of the Employees Welfare Association?

Mr. Edises: Well, there again my objection is that the [42] question should be whether or not there was any official action, or resolution taken. Otherwise it is only an opinion and conclusion of this witness.

Trial Examiner Ruckel: He may answer.

The Witness: Will you repeat the question, please?

Q. (By Mr. Royster): What is the purpose of the Employees' Welfare Association?

(Testimony of Frank Marshall.)

A. It was set up as a temporary organization—maybe that is the wrong word to use—temporary group of workers who elected their officials, who were to bargain, who were to seek affiliation with some other strong international.

Q. Did the Employees Welfare Association have any purpose or any function to perform, as you understood it, until there may have been affiliation with a, as you put it, strong international union?

A. No. As I stated, it was merely a temporary organization to hold the membership together until such time as we could affiliate with a stronger international.

Trial Examiner Ruckel: We will recess for 10 minutes.

Mr. Royster: All right.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): Mr. Marshall, you testified about a meeting of employees on July 30. Was there another meeting of Respondent's Employees?

A. Yes, there was, on July 31, the following day.

Q. And where was this meeting held?

A. At the Finnish Brotherhood Hall.

Q. And about what time of day?

A. Around noon, I believe.

Q. And by whom was it attended?

A. By the employees of Colgate-Palmolive-Peet Company.

Q. Did you attend this meeting? A. I did.

(Testimony of Frank Marshall.)

Q. And will you tell us what took place at the meeting?

A. There was a report back by the four elected officials of the Employees Welfare Association telling the Employees Welfare Association of the negotiations which had been talked about the company, officials of Colgate-Palmolive-Peet. And the results were that the Colgate-Palmolive-Peet Company could not put the five Stewards back to work.

Q. Did Mr. Railey attend this meeting?

A. Yes, he did.

Q. He was invited there?

A. He was invited there, yes.

Q. Did he speak?

A. Yes, he did. He was called there mainly to show him what action the employees intended to take, and he told us that there was not very much he could do about it. Several proposals were made to him. He spoke to us for some half hour, [44] about a half hour. And at that meeting the employees decided to hold a continuous meeting until such time as the five Stewards could be put back to work. A vote was taken in the presence of Mr. Railey, a standing vote, showing him that the membership was directly behind the five men who had been discharged from the plant, Colgate-Palmolive-Peet.

Q. Now, you spoke of a continuous meeting. Did this meeting continue on the first day of August?

A. No, I believe it was August 2nd.

(Testimony of Frank Marshall.)

Q. All right, did you attend the meeting on August 2nd? A. I did.

Q. Can you tell us what happened during that meeting?

A. No progress had been made between the four elected officials of the Welfare Association, Employees Welfare Association, and on August 2 the AFL Chemical Workers Union had been contacted and at that time the Employees Welfare Association was dissolved and the A. F. of L. Chemical Workers Union was to be the bargaining agent for the employees of Colgate-Palmolive-Peet.

Mr. Hecht: I object to that statement (it is a conclusion of the witness), and ask that it go out.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Royster): Now, you spoke of the dissolution——

Trial Examiner Ruckel: That is, that part of the answer may be stricken, which was that the Chemical Workers [45] Union was to be the representative of the employees of Colgate-Palmolive-Peet.

Q. (By Mr. Royster): You spoke, Mr. Marshall, of the dissolution of the Employees Welfare Association. How was that dissolution brought about?

A. That was through a motion from the Employees Welfare Association to dissolve the Employees Welfare Association.

Q. Was that motion put to a vote?

A. That motion was put to a vote and it was

(Testimony of Frank Marshall.)

unanimously accepted by the said members of the Employees Welfare Association.

Q. Now, you mentioned the International Chemical Workers Union, A. F. of L.

Was there any motion with respect to that organization considered at this meeting of August 2?

A. There was a motion, there was a motion put on the floor at that meeting that we join the Chemical Workers Union, A. F. of L.

Q. And was that motion put to a vote?

A. It was. It was a unanimous vote by the membership.

Q. To do what?

A. To join the Chemical Workers Union, A. F. of L.

Q. Did you join the Chemical Workers Union?

A. I did.

Q. Have you returned to work for the Respondent? [46] A. No.

Q. Have you made any attempt to return to work? A. I did.

Q. When?

A. Oh, approximately August 17.

Q. 1945? A. 1945.

Q. What did you do?

A. I, in company with the five Stewards——

Q. You being one of the five?

A. I being one of the five Stewards, and the four elected officials, which was Thompson, Sherman, Lonnberg—(pause)

Q. Was Olsen in that group?

(Testimony of Frank Marshall.)

A. And Olsen, nine of us, went to Mr. Altman's office and presented ourselves for work. Mr. Wood came to the office immediately after. We told him that we were prepared for work and he said that—Mr. Wood said that he was sorry, that we could not be put back to work. We then asked him if we were discharged. He told us to be very careful about using the word "discharged."

Mr. Hecht: May I hear that again, please?

The Witness: He told us—Mr. Wood told us that we should be careful about using the word "discharged" as the Company had not discharged us, that in the near future some of us would be back to work, and that if we used the word [47] "discharged" it would mean that our insurance benefits and old age pension would be broken off.

Q. (By Mr. Royster): I think you answered this question, but in order to be certain, what answer was finally given you on this occasion with respect to your application for reinstatement?

A. "No."

Mr. Royster: That is all.

Mr. Rowell: Could I ask one of two questions before cross?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Rowell): You stated, I think, Mr. Marshall, that you worked at the Colgate-Palmolive-Peet Plant from October 28, 1928, until your severance of employment, shall we call it, on July 30, 1945?

A. That is correct?

(Testimony of Frank Marshall.)

Q. Can you tell me what you did, what was your last job there?

A. Stockman for the Shipping Department.

Q. Can you tell me your pay that you got at that time?

A. At that time it was \$1.12½ an hour.

Q. What kind of seniority did you have?

A. I had all of my seniority in the Shipping Department at that time.

Q. Both departmental and plant seniority in that plant? [48]

A. That is correct.

Q. So you had a certain status of plant seniority as well as a certain status of departmental seniority?

A. All my seniority with the company was both in the plant and in the department.

Q. Yes. You had departmental seniority from October 28, 1928? A. That is correct.

Q. Were there any employees in that department that had more seniority than you?

Mr. Edises: Well, just a moment.

A. About four.

Mr. Edises: Just a moment.

I object on the ground of irrelevant to the issues.

Mr. Rowell: Well, Mr. Examiner, I am trying to show that these people that were selected had a long employment history there, and there was obviously no reason for their discharge by the

(Testimony of Frank Marshall.)

company except what the charge of the Board in this case alleges.

Trial Examiner Ruckel: Well, there is no contention they were discharged for inefficiency, is there?

Mr. Edises: No such contention in this case that I know of.

Trial Examiner Ruckel: I would prefer to leave this type of evidence out, although as a time-saver sometimes it [49] is preferable to let it in.

Mr. Hecht: May I make a suggestion, Mr. Trial Examiner?

Trial Examiner Ruckel: As far as it affects their back pay——

Mr. Rowell: The first part is back pay.

Trial Examiner Ruckel: The first part affects their back pay, but even then it is academic.

Mr. Edises: It is a matter of compliance.

Trial Examiner Ruckel: Sometimes it is quicker to get it in than to keep sustaining objections. As to the latter part of the question, it appears that the issues are very well drawn here. These men were not let out because they were inefficient.

Mr. Hecht: Mr. Rowell, it might be useful to say at this time we would be happy to furnish the records of the plant with reference to the seniority of the Complainants.

Mr. Rowell: I would be glad to have them.

Mr. Hecht: If it becomes relevant and material to the issues of this hearing.

Mr. Rowell: The only point is that it certainly

(Testimony of Frank Marshall.)

demonstrates the necessity for the National Labor Relations Act in situations like this, where people of long standing seniority who have devoted their entire lives practically to their employment in this company are cut off after all that employment. Now, that is a matter that I think is certainly [50] morally material to the case, but I will desist asking that question.

Trial Examiner Ruckel: The length of their employment is irrelevant. If they are wrongfully discharged we are concerned, even though they have been employed only 24 hours.

Mr. Rowell: All right.

Q. (By Mr. Rowell): Well, Mr. Marshall, the first meeting that you talked about, that was the dinner meeting of July 26, is that right?

A. Yes.

Q. Where you had this group of 29 or 30 people at this dinner? A. That is correct.

Q. Now, among other things, at that meeting was there any action taken with reference to what you were going to do at the next meeting?

Mr. Edises: Now I want to object to this line of questioning because it is all repetitive, it has already been gone over in questioning by the Board's attorney. I submit that the same consideration that applies to us should apply to the charging union.

Mr. Rowell: Certainly. I am trying to fill in the testimony, Mr. Examiner, that is all. I am not going to cover the testimony——

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: You may answer. [51]

A. Well, in general the discussion was the conditions, working conditions that had been going on for the last year or so, and as to just what we should do, outlay the groundwork as to what we should do for the future, and a general discussion of the lack——

Q. (By Mr. Rowell): Well, now, Mr. Marshall——

Mr. Edises: I submit he should be permitted to answer the question.

Mr. Rowell: He is not answering the question.

Trial Examiner Ruckel: Did you finish your answer?

The Witness: I say the lack of cooperation from the officials of the ILWU.

Q. (By Mr. Rowell): But I asked specifically: Were you going to have another meeting after this dinner meeting? I understood you decided to have this July 30 meeting? A. That is correct.

Q. Now, I asked specifically did you decide anything on the July 26 meeting, as to what you were going to do at the July 30 meeting?

A. Well, mainly it was to discuss the conditions, working conditions of the plant itself, what had been going on the past year, and we discussed the United Mineworkers Union.

Q. All right. You discussed one possibility of union affiliation that was the United Mineworkers?

A. That is correct. [52]

(Testimony of Frank Marshall.)

Q. Did you discuss any other possibility of action at that time?

A. No, there was none others discussed at that time, to the best of my knowledge.

Q. Did you discuss the formation of any temporary organization? A. Yes, we did.

Q. What was that organization?

A. The Employees Welfare Organization.

Q. In other words, at the July 26 meeting you did discuss the advisability of forming the Employees Welfare Association?

A. We discussed forming the Employees Welfare Association at that time.

Trial Examiner Ruckel: Well, it was not formed at that time?

The Witness: No, it was not formed at that time.

Q. (By Mr. Rowell): Now, at what time of day were you advised by Mr. Railey that you would have to be let go? This was on July 30, I believe you said.

A. That was at 2:00 p.m. on July 30.

Q. Were you told that you were through then?

A. Yes.

Q. Why didn't you finish out the day?

A. Well, after all, we was not going to get paid for it. I guess the best thing to do was leave. [53]

Q. Did they give you your money?

A. No; I got paid for six hours that day.

Q. Was that unusual, to discharge a person in the middle of the day?

(Testimony of Frank Marshall.)

Mr. Edises: I object to that.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): Now, at this meeting of July 30 when the Employees Association was set up, did you take some action with regard to trying to get those five Stewards back on their jobs, and, if so, what action did you take?

A. Well, the action was not taken by the five Stewards. The action was taken by the——

Q. I mean at the meeting, did the meeting take some action with regard to an attempt to get those Stewards back?

A. Yes. Well, the action was taken by a motion passed by the Employees' Welfare Association at that time.

Q. That is right. What was the action?

A. The action was that these four elected officials were to go and negotiate with the company, Colgate-Palmolive-Peet, and seek to reestablish these five men.

Mr. Edises: Mr. Trial Examiner, as I understand it, this is really a continuation of direct examination, is it not?

Trial Examiner Ruckel: That is right.

Mr Edises: Rather than cross. [54]

Well, my notes show that all of this testimony has been gone over and it is purely repetitive.

Mr. Rowell: Your notes are not in the record, Mr. Edises. My notes show there were lacks in the testimony in that regard.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Some of it is repetitious, other isn't repetitious. We do want a complete story. We don't want to repeat it, but we want one that is complete.

You may answer.

The Witness: Will you repeat that question?

Mr. Rowell: I think he answered the question. I have nothing further.

Trial Examiner Ruckel: Cross examination.

Cross Examination

By Mr. Hecht:

Q. Mr. Marshall, do you remember the wording of the notices that you yourself posted on "A" building under the time clock?

A. Yes, I do. I have got a copy of it here if you want it read.

Q. Yes. May we have it, please?

A. (Handing document) That is just my handwriting (indicating).

Q. Have you a copy of the notices actually posted? A. Not with me, no.

Q. Could you bring one for us to use? [55]

A. I am not sure. I don't know whether I have it with my file or not.

Mr. Hecht: Well, pending the bringing of such a notice I would like to read into the record——

Mr. Edises: May I see it?

Mr. Royster: Maybe we can stipulate what the notice shows. I don't have a copy of it.

Mr. Hecht: Is it agreeable to reading it into the record?

(Testimony of Frank Marshall.)

Mr. Royster: Well, I presume it is the notice which was posted.

Mr. Hecht: Well, subject to correction in the event we can locate one of the notices.

Mr. Rowell: That is all right.

Mr. Hecht: "Special meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, across from Burbank School, at 4:15 p.m., Monday, July 30, 1945."

Q. (By Mr. Hecht): Mr. Marshall, could you tell us who were the officers of the Employees Welfare Association?

A. William Sherman, Harold Lonnberg, Edwin Thompson.

Q. Only three officers?

A. And Lincoln Olsen.

Q. Olsen also? A. Yes. [56]

Q. What office did Mr. Sherman hold?

A. Chairman at that time.

Q. Chairman. What office did Mr. Lonnberg hold?

A. At what date are you speaking of? Are you speaking of the first——

Q. Well, you have told us, Mr. Marshall, that you formed an Employees Welfare Association, I believe, on July 30, 1945. A. That is correct.

Q. As of that date who were the officers and what offices did they hold?

Mr. Rowell: Well, there has been no testimony they had officers, Mr. Hecht. There was testimony

(Testimony of Frank Marshall.)

they elected the four people to represent the Association to attempt to get those Stewards back. That is all the testimony so far, I believe. He referred to those men as officials.

Trial Examiner Ruckel: There was this committee of four, is that right?

The Witness: That is right.

Trial Examiner Ruckel: Did they subsequently constitute them officers, or become officers at—

The Witness: They were officials of that body of people. They were elected as negotiators to go back and talk with the company.

Q. (By Mr. Hecht): Let me ask you this, Mr. Marshall—maybe I can clarify it this way: In other words, you didn't [57] have any such thing as a President, Vice President, Recording Secretary, Secretary, Business Agent, or Walking Delegate, or any of those things?

A. No, not at that particular date.

Q. And those men were only appointed for the purpose of seeing to it that you might be able to get your employment back in Colgate-Peet, or rather, to have you put back to work there?

A. That is correct.

Q. That was the sole purpose of that committee?

A. That is correct.

Q. Can you tell us, or rather, will you tell me how you knew that the 270 persons that attended the meeting on July 30 were employees of the Respondent?

(Testimony of Frank Marshall.)

A. Well, I would say between the five Stewards we knew practically every face in the plant of the employees.

Q. In other words, you recognized a certain number, I take it? A. That is correct.

Q. And the other five stewards who were present at this meeting, communicated to you that they recognized an equal number of your people and then you arrived at 270 employees?

A. No, I wouldn't say that.

Q. You are not certain of the number of employees there?

A. I did not recognize any stray faces there myself. I [58] personally knew practically every person at Colgate-Palmolive-Peet at that time.

Q. Where were you at the time of the meeting?

A. In the hall.

Q. Where in the hall?

A. Sitting in a chair.

Q. On a stage, a rostrum?

A. No; in the audience.

Q. In the audience? A. Yes.

Q. Did you take toll of the people as they came in through the door?

A. I counted them after.

Q. You counted them after? A. Yes.

Q. And recognized every face as it went out?

A. I did not see any stray faces.

Q. I see. So that in a way this is your opinion as to the number of persons present, and as to

(Testimony of Frank Marshall.)

whether they were or were not employees of Colgate-Peet? A. That is correct.

Mr. Royster: I object to the question as argumentative.

Trial Examiner Ruckel: Well, in your opinion they were all members?

The Witness: To the best of my knowledge all the people [59] in that hall were members of—were employees of Colgate-Palmolive-Peet Company.

Trial Examiner Ruckel: When you say their faces were familiar, you mean they were familiar to you as employees of Respondent?

The Witness: That is correct.

Q. (By Mr. Hecht): How was the vote taken at this meeting, Mr. Marshall?

A. What particular vote are you referring to?

Q. Well, you say that you had a committee of four elected first? A. By a standing vote.

Q. By a standing vote? A. Yes.

Q. And were you able to see the number of people who voted? A. Yes.

Q. How?

A. The Finnish Brotherhood Hall is—I might describe the hall. It has a lower floor and it has a raised bench around the sides of the auditorium, which is about one foot higher than the rest of the seats. From that particular point I could see the whole hall.

Q. You were on this raised platform around the hall there? A. That is correct.

Q. Are you sure that this vote on this first—the

(Testimony of Frank Marshall.)

appointment [60] to this committee was on an "Aye" or "No" basis? A. No, it was not.

Mr. Rowell: Do you understand the question?

Mr. Royster: Does this assume he has so testified? I understand he has not.

Trial Examiner Ruckel: Was it a "Yes" or "No" vote?

The Witness: It was a standing vote to elect the officials.

Q. (By Mr. Hecht): In other words, the Chairman said, "Those voting in favor will rise"?

A. That is correct.

Q. That is why I am asking you. You are sure that is the way the vote was taken?

A. That is right.

Q. All right. Was it at the meeting of July 30th that the members present or the persons present decided to break relations with the ILWU?

A. That is correct.

Q. At the July 30th meeting?

A. That is correct.

Q. And do you recall who made the resolution?

A. One of the members.

Q. Who? A. I can't recall.

Q. No one you recognized? [61]

A. I didn't see; I didn't even look.

Q. Do you know of your own knowledge whether notice of this resolution was ever given to the company?

(Testimony of Frank Marshall.)

A. Well, I didn't send it. I was told that there was.

Q. Who told you?

A. One of the four elected men there. I don't recall who it was now.

Q. One of the committee of four?

A. One of the committee of four.

Q. When were you told that such notice had been given to the company?

A. Sometime during that meeting, or just after it—now, I don't recall the exact time—of the meeting of July 31.

Q. Sometime afterwards?

A. That is correct.

Q. That is what you were told. Do you know if that notice was in writing?

A. I believe it was a telegram.

Q. A telegram? A. A telegram.

Q. Mr. Marshall, you testified that you were a steward at the time of your removal from employment; is that correct?

A. That is correct.

Q. And you had been active—withdraw that.

As a Steward you are a representative of the union and [62] not of the company, is that correct?

A. We are a representative of the employees of Colgate-Palmolive-Peet.

Q. And for how long did you say you had held this position?

A. Three consecutive years, and preceding that on one other occasion.

(Testimony of Frank Marshall.)

Q. Would you say that you were such a Steward in July of 1941?

A. Well, I couldn't recall that date.

Q. Are you familiar with a certain contract that—I won't say "exists"—well, a contract that presently exists between the Respondent and the ILWU dated July 9, 1941?

A. That is correct.

Q. It was your duty as such Steward, was it not, to see that the Company complied with the provisions of that contract?

Mr. Royster: I am going to object to this line of examination, Mr. Examiner, unless counsel for the Respondent will state his purpose. It appears that he is laying a certain background here to show that the witness was not properly performing his duties as a Steward.

Mr. Hecht: That is not the object. I will tell you the object of the question in just a moment.

Trial Examiner Ruckel: You may answer it.

Do you recall the question? [63]

The Witness: No. Will you repeat the question?

Mr. Hecht: I will repeat it.

Trial Examiner Ruckel: All right.

Q. (By Mr. Hecht): Do you recall, or have you knowledge of a contract existing between the respondent and the ILWU dated July 9, 1941?

A. Yes.

Q. And I think when the objection came I had asked you whether it was not your duty to see to

(Testimony of Frank Marshall.)

it that the Respondent complied with the provisions of the contract, as a Steward?

A. That is correct.

Q. And you are familiar with that contract, then, are you not? A. Yes.

Mr. Hecht: Mr. Royster, with your permission, I have here what appears to be a true duplicate of the contract. The original is at my office. And I would like at this time to introduce this copy as our Exhibit, and I will substitute the original tomorrow at the opening of the hearing.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:00 p.m. an adjournment was taken to Tuesday, February 5, 1946, at 9:30 a.m.) [64]

Proceedings

Trial Examiner Ruckel: The hearing will be in order.

Let the record show that at 9:30 this morning the parties met and have discussed a stipulation covering many of the facts in the case, and that the hearing now will be recessed until 1:30 this afternoon.

(Whereupon, at 11:58 a. m. a recess was taken until 1:30 p. m. of the same day.) [68]

After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 1:30 p.m.)

Trial Examiner Ruckel: The hearing will be in order.

Mr. Marshall, will you resume the stand?

FRANK MARSHALL,

called as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, was examined and testified further as follows:

Mr. Hecht: Mr. Examiner, in view of the fact that certain matters concerning the meeting as to which Mr. Marshall has testified have been stipulated to, I will at this point drop that line of cross-examination and go on to another matter.

Trial Examiner Ruckel: All right, sir.

Mr. Hecht: May I have Board's Exhibit 7?

Mr. Royster: I suppose the record should show that the stipulation is tentative, it doesn't appear in the record, and Board's Exhibit 7 doesn't exist as far as the record at present stands.

Trial Examiner Ruckel: That is correct. Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Cross-Examination

(Resumed)

By Mr. Hecht:

Q. Mr. Marshall, I think that yesterday [69] you testified that you were familiar with the agree-

(Testimony of Frank Marshall.)

ment dated July 9, 1941, between the respondent and the ILWU? A. That is correct.

Q. I will show you a copy of what purports to be that agreement. Will you examine it, please?

A. (Examining document.)

Mr. Royster: Well, the Board will stipulate now that the document which has been handed to the witness for examination is a copy of a bargaining agreement entered into July 9, 1941, between the Company and the ILWU.

Mr. Rowell: I will stipulate to that effect also.

Mr. Edises: So stipulated.

Q. (By Mr. Hecht): Mr. Marshall, I think you testified on August 17, 1945, you reported back to an officer of the respondent, asking to be put back to work? A. That is correct.

Q. I will ask you to read to yourself Sections 2 and 3 of the Board's Exhibit 7.

Mr. Royster: It doesn't have an exhibit number, Mr. Hecht, and it has not been offered in evidence.

Mr. Hecht: May I at this time, then, Mr. Examiner, offer in evidence a copy of the contract dated July 9, 1941, existing between the respondent and the ILWU?

Mr. Rowell: Why don't we have it offered as Board's Exhibit 7 out of order? [70]

Trial Examiner Ruckel: Let it be marked Board's Exhibit 7 and received in evidence.

Mr. Royster: Very well.

(Thereupon the document above referred to

(Testimony of Frank Marshall.)

was marked Board's Exhibit 7 and received in evidence.)

Q. (By Mr. Hecht): Will you then read to yourself Sections 2 and 3 of this contract, Mr. Marshall? A. (Examining document.)

Q. On August 17, 1945, when you applied to be reinstated to your position you knew this contract was in existence, did you not?

A. I knew of the contract.

Q. Yes. And you knew the provisions of Section 3 of the contract? A. I do.

Q. And of Section 2 A. Yes.

Mr. Rowell: Well, now, Mr. Examiner, I am going to make an objection to this line of testimony on the basis that the entire case involves the question of whether this employee and other employees similarly dealt with are entitled and were entitled at the time to reinstatement. To ask this witness whether the contract covers that situation or not is to ask this witness to perform the functions of the National Labor Relations Board. [71]

Trial Examiner Ruckel: Well, he has not been asked that yet.

Mr. Rowell: Well, no. I object to the line that he is about to go into then.

Trial Examiner Ruckel: I take it this is preliminary.

Mr. Hecht: Yes.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Hecht): On August 17, 1945, you

(Testimony of Frank Marshall.)

were not a member in good standing of the ILWU?

Mr. Rowell: That also calls for his conclusion. The witness doesn't purport to be able to pass on the suspension.

Mr. Hecht: Let me reframe the question.

Mr. Rowell: All right.

Q. (By Mr. Hecht): You knew then at that time, Mr. Marshall, that you were charged with not being a member in good standing of the ILWU?

Mr. Rowell: I will object to that too, as a matter of fact, as to the member knowing whether he was charged properly and legally charged. The issue of whether proper charges were delivered to this witness is one that may yet have to be determined in court.

Trial Examiner Ruckel: Well, but the witness can testify what happened. Was he told he was discharged, or told he was being tried, or told he was being suspended. Does he have knowledge of some proceeding that was being taken [72] against him? The witness may testify to those things.

Mr. Rowell: All right.

Q. (By Mr. Hecht): Had any charges been made against you by the ILWU at that time?

A. They had.

Q. You knew at that time that the company had been informed that you were not a member in good standing of the ILWU? I am referring at this time to August 17, 1945.

A. Yes.

Mr. Hecht: That is all.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I have some questions.

Q. (By Mr. Edises): Mr. Marshall, you testified that on July 20, 1945, you had a conversation with Mr. Railey outside the "L" building, and I believe you testified that you asked that the stewards be present when the contract was signed because you expected trouble.

What trouble were you expecting?

A. Well, I knew labor difficulties were going to arise in the very near future. That is what I was referring to at that time.

Q. Well, can you tell us more exactly what labor difficulties you knew were going to arise?

Mr. Rowell: What is the date of this conversation you are referring to? [73]

Mr. Edises: July 20.

A. I knew that a state of unrest was amongst the employees of the Colgate-Palmolive-Peet Company, and I knew that within the preceding two or three weeks that something would happen.

Q. (By Mr. Edises): You mean the succeeding two or three weeks?

A. After July 20th; after.

Q. You said you knew that within the preceding two or three weeks something——

A. (Interposing): I meant the——

Q. Succeeding, following?

A. I meant the following two or three weeks.

Q. Yes. What had you had to do personally with this so-called labor trouble, labor difficulty?

(Testimony of Frank Marshall.)

A. Well, being a Steward I more or less had contact with a wide majority of the members of the plant, of the employees of Colgate-Palmolive-Peet Company, and hearing what they had to say, and forming my own opinion, I knew that eventually something along the lines of labor difficulties would arise.

Q. Yes. And how long had you had this knowledge?

A. Oh, I would say that it had been going on quite a bit during the entire part of 1945, from January 1 until July 30.

Q. From January 1, 1945? [74]

A. That is correct.

Q. And tell us a little more exactly just what it was that was going on there in this period?

A. Well, there was just general conversation between myself and other employees as to what they didn't like about the union set-up, and, in general, I would say.

Q. And in these conversations between other employees and yourself did you express yourself as not liking certain things about the union set-up?

A. My personal opinion.

Q. And just what were these things that you didn't like?

Mr. Rowell: Well, now, that is objected to, Mr. Examiner. I may say that there is some indications of a plan to go into the old conduct of the CIO Union, the various reasons why these people here were dissatisfied with it, and to show that the con-

(Testimony of Frank Marshall.)

duct of the union was appropriate. It is utterly immaterial. I don't see why Mr. Edises wants to go into it.

Trial Examiner Ruckel: I can agree to that, we certainly don't want to go into the merits or demerits of either union.

Mr. Rowell: No. If these people had reasons to dislike the Union, whether they were good or bad they were entitled to change their affiliation. I don't care whether their reasons were good or bad myself. I don't see why we [75] have to open up this issue because it is going to be quite extensive.

Trial Examiner Ruckel: I don't think counsel meant to open it up by his question.

Mr. Edises: May I say he testified to the conversation. I have a right on cross-examination to go into the basis of the details of that conversation.

Trial Examiner Ruckel: You didn't ask him what the conversation was. You asked him what the things were he did not like.

Mr. Edises: Yes, I wanted more details. He started to testify about these labor troubles and difficulties which he said he discussed with Railey. I submit on cross-examination I have a right—

Mr. Rowell: Now, he didn't testify to that. He didn't say he had any conversation with Mr. Railey about labor difficulties.

He said he had a conversation with Mr. Railey and said he wished the Stewards to be present. And you asked him the reason why. Now, he has given you the reason why.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Objection sustained to the form of the question.

Mr. Edises: May I have the question read, please?

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the Reporter.) [76]

Mr. Edises: May I point out, Mr. Examiner, that he testified he wanted the Stewards present at this meeting because he expected trouble? Now, I submit that we should not be precluded from developing further just what this trouble was that he expected, and all these questions go to developing through his testimony just what this trouble was.

Mr. Hecht: Pardon me, Mr. Edises. I have no objection to your question, but could it be stipulated that whatever Mr. Marshall testified to at this point does not tie up the respondent to this labor trouble, will not be held binding on the respondent?

Trial Examiner Ruckel: Well, I don't think that we are interested in general in what the dissatisfactions were. He was asked as to conversations he had had with the employees. He testified he had had conversations with the employees in which they had expressed dissatisfaction, and he thought that would come to a head. Now he is asked what the things were which he did not like.

Mr. Edises: Well, that is part of the trouble, Mr. Examiner, part of this labor trouble. I don't see how we can possibly bring it out unless we do

(Testimony of Frank Marshall.)

ask him just what the trouble was as he regarded it.

I may say further if the Examiner insists on that ruling he will in fact be preventing us from developing our defense because our defense implies in part that the basis [77] of the disciplining of these union Stewards and others was internal disagreements on matters of policy within the organization at a time quite prior to any contemplated change of affiliation.

Trial Examiner Ruckel: Well, it might be well to have the record show that, if you can show it, but without getting into whether or not what side was right in its positions.

Mr. Edises: I am not interested in the question of what was right. I am interested in developing, Mr. Examiner—and I insist that we have got to be able to do that or we are foreclosed from presenting our defense—I am interested in developing the existence of a state of disagreement and conflict within the organization at a time considerably prior to the events that have been so far testified to, and that is one phase of our defense in this case.

Trial Examiner Ruckel: Well, you speak of “defense.” You are not on trial.

Mr. Edises: I appreciate that.

Trial Examiner Ruckel: The respondent is on trial.

Mr. Edises: But we are at the same time defending our contractual rights.

Trial Examiner Ruckel: I don’t know whether you are defending your contractual right or not. The

(Testimony of Frank Marshall.)

questions, it really seems to me, are how much of this did the respondent have knowledge of to form any part of its motive in discharging [78] its employees.

Mr. Edises: True.

Trial Examiner Ruckel: And if it can be shown that the respondent had no knowledge of this and it formed no part of its motive, then there is no case against the respondent, and we don't care whether or not you or your organization is not justified in some intra-union or some inter-union.

Mr. Edises: I think that is true, but I think as a condition precedent to showing the respondent's knowledge of this we have got to show what it was. I think it will be developed in further testimony that the respondent did have knowledge of some of this internal union disagreement, but I submit that before we can show that we have got to show the existence of this internal union disagreement because that is one of the main bases of our presentation here.

Trial Examiner Ruckel: Well, I can see that we might be opening the door to a long argument in this case, not a trade union argument but an intra-union argument.

Mr. Edises: That, as I say, is the basis of our case, Mr. Examiner. In other words, this is a matter that the Board has not as yet had before it, a situation where we are endeavoring to show that the reason for the Union's action was an internal situation, a matter of differences over internal union

(Testimony of Frank Marshall.)

policy which long antedated this cessationist move that has been testified to. [79]

Now, I submit that the Board ought to have all those facts before it in order to be able to determine whether it is a valid defense.

Mr. Hecht: May I say something, Mr. Examiner, at this point: Assume this: that the Company knew that there were five causes of disagreement between the complainants here and the intervening ILWU. Now, the Company is here on an imputed charge. In effect, what this proceeding amounts to is this: That the complainants are charging that they were expelled or suspended from the ILWU without just cause because they were merely attempting to change their bargaining agent, and that the Company, setting itself up as an extrajudicial tribunal should have ascertained whether or not the cause of their suspension or expulsion was just, and if it found to its own satisfaction that it was not just cause it should not honor the demand for their removal from the Company, otherwise that it would honor it. Now, if the Company knew there could be possibly five reasons for this discipline, the Company is entitled to show that there were five reasons, and it should not attempt the second guess, what the reason was the union had for suspending these men.

Mr. Edises: I may say, your Honor, that there were two trials held by the Union of the defendants in this case, and we intend at an appropriate

(Testimony of Frank Marshall.)

time to introduce in [80] evidence the records of those trials and the findings of the Union.

Mr. Rowell: Well, now, on that again——

Pardon me for interrupting, but I think it is appropriate to point out that that offer of proof by the CIO Union will obviously have to be met by countervailing proof on our part that these proceedings held within the Union were improper, illegal, unlawful, and improperly founded throughout.

Now, are we going to try the Union's internal processes in this case?

Mr. Edises: That is just the point. The point is, in my opinion, what we have here is a matter of internal conflict between the unions. That is the basis of our presentation, of our case, and the Board has got to have those facts. It may very well be that Mr. Rowell is right, and that when the Board has had these facts placed before it it may throw the whole case out and say it is not going to intervene in the internal affairs of a union, but certainly the Board has got to have the facts before it is in a position to make any such determination.

Trial Examiner Ruckel: Why? I mean the Board's case stands or falls upon the part that the respondent played. If the respondent knew nothing about the internal affairs of the Union then there would be a strong inference that [81] the men weren't discharged because of any intra-union fight.

Mr. Hecht: Assume this, Mr. Examiner: May I ask this: I would like to know your position in

(Testimony of Frank Marshall.)

the matter. Assume that the Company knew there might be five or six reasons why these men should be disciplined, or could be disciplined by the ILWU, and that among those reasons was either dual unionism, or attempting to get a new bargaining agent, now, is the Company going to be asked or be placed in the position of committing an unfair labor practice because it did not set itself up as an extra-judicial tribunal to find out which of these five or six causes caused the disciplining or expulsion of these complainants?

Trial Examiner Ruckel: Well, I won't purport to answer that question. You know the cases so far, probably. If I correctly understand the cases so far, without holding to the contrary, they have to date in substance held this: that the discharge is discriminatory where the respondent discharged the man involved with the then present knowledge that the reason given by the Union, that is, that he was not paid up in his dues was false, but that it had at that time knowledge that something else was true, in other words, that he had opposed that Union at a previous election or had in some other way been guilty of what the Union calls dual unionism, but the cases so far have not required the [82] respondent to act upon anything which was not before it.

If I may cite the recent Phelps-Dodge decision of the Board, which happens to have been my own case, where the man was discharged, presumably—well, the man's discharge was requested by the Union which had the contract on the ground that

(Testimony of Frank Marshall.)

he had not paid his dues. The evidence showed, however, that the man, though previously being a member of the Union, had stopped paying his dues before the escape clause provided for in the contract had run, he had stopped paying his dues before that time. Now, he had a receipt for his dues. The last receipt showed that his dues had not been paid up within months of the time of the contract. But he exhibited that receipt to the Company and the Union representatives sitting together in the office. It is perfectly obvious on its face that he had withdrawn from the Union long before he would have been obligated to keep up his membership. The Company discharged him at the simple request of the contracting union. Well, the Board held that was discriminatory. It said that the evidence before the Company was such that the Company had to go no further than it to ascertain that the man was not—the man had never been obligated to pay his dues since the contract was signed. In other words, the Board has not held so far that the Company is obligated to take affirmative steps to carry on or conduct an investigation of the Union's books, for example, which would have [83] been material in this case to find out whether or not the dues had been paid up, or any other internal affairs of the Union, but to act only upon the information that it has at the time.

Now, I think that is the crux of the case. I don't say the Board will never go any further than that, but I say today it has not.

(Testimony of Frank Marshall.)

And if we are going to ask this witness or other witnesses what the situation was in the Union, then what is the relevancy unless you go further and show that the Company had knowledge, or should have had knowledge of that situation in the Union?

Mr. Edises: Well, I agree with that, and I agree with the legal question of the Company's knowledge. But suppose the facts should develop, Mr. Examiner, that in the past year or two the defendant had been brought before the Union on charges of violating the Union's racial discrimination, no discrimination policy——

Mr. Rowell: By the "defendant" do you mean the witness?

Mr. Edises: I am sorry. I mean the witness.

And that he had been reprimanded by the Union for violating that racial discrimination policy, and, suppose for example, that it also showed that he had not been carrying out his duties as Steward, and that he had been sabotaging out his duties as Steward, and that he had been sabotaging the political action program of the Union, and [84] that he had been refusing to call a meeting of the employees to discuss current contract negotiations and similar matters, and that the Company had been aware of these matters, of disagreement between the witness and the Union——

Mr. Rowell (Interposing): Well, now——

Mr. Edises: I haven't finished.

——and then there came along a request by the Union that this man be suspended, with that back-

(Testimony of Frank Marshall.)

ground in the Company's knowledge, well, now, wouldn't that go to the question of whether the Company believed in good faith that the Union's action was taken because of these matters of violation of Union policy rather than because of affiliation with some outside organization?

Trial Examiner Ruckel: I can see some force in that.

Why can't we do this: Can't we stipulate as to the bare facts, that if it is true——

Mr. Rowell: You don't suggest that we even for a moment would consider stipulating to——

Trial Examiner Ruckel: Well, if it is a fact that this witness, for example, were brought up to some kind of a trial in the Union, let that bare fact be stipulated to, that is, if he was brought up to trial for having made some anti-racial statement, for example. Now, if that is a fact can it be stipulated to, not as to whether he was guilty or not, and not as to what the statement was, but the bare [85] fact that he was tried?

Now, that certainly ought to be sufficient.

Mr. Edises: Well, it may be that that would be sufficient. You know, it strikes me we are taking up an awful lot of record.

Trial Examiner Ruckel: You couldn't certainly expect the Respondent to be the judge of whether the Union had acted rightfully or not, or whether this man was guilty in some internal Union trial?

Mr. Edises: Obviously not.

Trial Examiner Ruckel: The most that could be

(Testimony of Frank Marshall.)

asked of the Respondent, the most that could be assumed, it seems to me, would be the Respondent knew of it.

Mr. Edises: I realize that.

May we go off the record?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Let's go back to the record.

Q. (By Mr. Edises): Mr. Marshall, when was the first time a movement out of the ILWU was contemplated by the Stewards, by the Stewards or others of these nine? You know the nine that I am referring to?

A. You mean other than the nine people, other than the first nine who were taken out of the plant, or by all of the members of the plant? [86]

Q. Well, any who you may have been aware of or identified with?

A. Oh, I might say the early part of July, 1945.

Q. What form did that move take?

A. Just discussion, as I pointed out, a meeting with the officials of the United Mineworkers Union.

Q. Was that in July, 1945?

A. It was some time in July.

Q. Do you remember about when?

A. No, I don't remember just about when.

Q. Could you say whether it was towards the end of July or towards the middle or at the beginning?

A. Approximately the middle.

(Testimony of Frank Marshall.)

Q. And who did you speak to, what official of the Mineworkers?

A. I don't recall their names now.

Q. And prior to that time there had been no discussion of cessation, do I understand you correctly?

The Witness: Will you repeat that question?

Mr. Rowell: The question is whether the witness understands you correctly. I think——

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the Reporter.)

A. You mean that there had been no discussion of withdrawing from the Union? Of other Union affiliations? [87]

Q. (By Mr. Edises): Yes.

A. Not to my knowledge.

Q. Now, what particular matter, what particular grievance or matter was responsible for this withdrawal movement at that particular time?

Mr. Royster: I will object.

Mr. Rowell: Mr. Examiner, that is the same thing as we have been talking about before, I think. Regardless of the validity of the objections that these people had to the Union, whether the Union was right, or they were right, the only question is whether they decided to secede from the Union.

Trial Examiner Ruckel: It seems to me that is about the same thing we threshed out, isn't it, Mr. Edises?

(Testimony of Frank Marshall.)

Mr. Edises: Well, I am trying to limit it to recent history, but I feel that in view of the fact that the testimony is that in the middle of July, 1945, they made an actual withdrawal move, I should be entitled to ask them what the immediate occasion of that move was.

Trial Examiner Ruckel: But do you expect to show the Company was aware of that?

Mr. Edises: Yes, I think—in fact, all of this is predicated, as I understand the theory of the Board's case, on some showing of company knowledge. Unless there is that tie-up—— [88]

Trial Examiner Ruckel: There has been no showing of knowledge yet.

Mr. Edises: No.

Trial Examiner Ruckel: That is up to the Board.

Mr. Edises: Yes, but I assume as part of our case a mere recitation of these things would be of little significance from the standpoint of the Company's liability unless it could be shown that the Company had some knowledge.

Trial Examiner Ruckel: Well, but it is not up to you to produce that.

Mr. Edises: That is true.

Trial Examiner Ruckel: If that knowledge is not forthcoming then it becomes irrelevant whether he contacted the United Mineworkers or not.

I am going to sustain the objection at this time.

Q. (By Mr. Edises): Where did this meeting with a representative of the Mineworkers take place?

(Testimony of Frank Marshall.)

A. At the home of one of the first nine suspended men.

Q. Whose home? A. William Sherman.

Mr. Hecht: May I have that name again, please?

The Witness: William Sherman.

Mr. Hecht: Thank you.

Q. (By Mr. Edises): And who was present at that meeting?

A. Well, I recall a couple of the Stewards. [89]

Are you asking that I name each individual there?

Q. Yes, everyone that was present.

Mr. Rowell: With the exception of people now presently employed by the Employer?

Mr. Edises: If there were any such.

Mr. Rowell: I will add that, if there were any such.

A. Dave Luchsinger, myself, Sanford Moreau, William Sherman, and some officials of the United Mineworkers Union which I do not know their names.

Q. (By Mr. Edises): And just what was done at this meeting, what took place?

A. It was just a general discussion of what would have to be done to seek affiliations with another organization.

Q. And did you arrive at any decision?

A. I don't remember.

Q. Well, at any rate you did not affiliate with the Mineworkers? A. No.

Q. Now, coming to the next meeting, the July

(Testimony of Frank Marshall.)

26 meeting, who called that meeting? That was at Pete's Rendezvous.

A. That was William Sherman.

Q. And how was notice of this meeting given?

A. Just by word.

Q. Well, who did you give it to? Did you give it to everybody or did you have some more or less limited group [90] in mind?

A. Just a limited group.

Q. And what was that group?

A. A group of employees at Colgate-Palmolive-Peet.

Q. Well, the group that you had had previous discussions about withdrawing from ILWU?

A. They were included.

Q. Now, did you discuss the means of withdrawing from the ILWU? I am speaking of the July 26 meeting?

A. I don't remember.

Q. You did decide to do something, didn't you, at that meeting?

A. Yes.

Q. What did you decide to do?

A. I was not present at the entire meeting that particular night. I believe I came in a little later. But at that time, why, we decided to hold a later meeting for all the employees interested.

Q. Yes. Now, then, you held this later meeting on July 30, is that right?

A. That is correct.

Q. And notices were posted around July 28?

A. That is correct.

Q. In the plant?

A. That is correct. [91]

(Testimony of Frank Marshall.)

Q. And will you describe what took place at this meeting? A. The meeting of July 30?

Q. The July 30 meeting.

A. Well, at that time the Stewards had already been locked out of Colgate-Palmolive-Peet.

Q. When had they been let out with reference to the meeting? A. At 2:00 P.M., July 30.

Q. At 2:00 P.M. And the meeting was at what time? A. 4:15.

Q. Yes.

A. And at that time the motion was passed by the employees who attended that meeting to break off relations with ILWU and temporarily join the Employees Welfare Association.

Q. What was decided to be done about getting these people back, the five Stewards?

A. Four men were elected——

Trial Examiner Ruckel: He has told us all about this.

Mr. Edises: Yes, this is preliminary to something else.

The Witness: Four men were elected to contact the Company the following day and seek to reinstate the five Stewards who had been let out.

Q. (By Mr. Edises): Now, was there any discussion about how you were going to back up that demand? A. I don't remember. [92]

Q. When was there the first discussion of strike action? A. None that I know of.

Q. When did you first discuss with any of these

(Testimony of Frank Marshall.)

people you were associated with the question of refusing to work until these people were reinstated?

Mr. Tobriner: Objected to, Mr. Edises, on the ground no foundation has been laid for that. You are assuming something not in evidence.

Mr. Edises: This is cross-examination.

Mr. Hecht: I think there is a stipulation to that effect.

Mr. Tobriner: No.

Trial Examiner Ruckel: The stipulation has not been stipulated to yet.

Mr. Edises: However, it is cross-examination. I ought to have some leeway, I think.

Trial Examiner Ruckel: We can't assume on cross-examination that something has happened on which no testimony so far has been given.

Mr. Edises: I will go into it later then.

Q. (By Mr. Edises): Mr. Marshall, it is a fact that the Employees associated with you determined that they were going to refuse to return to work until the Stewards were reinstated.

Now, will you place the time that that decision was [93] made?

Mr. Tobriner: Why don't you ask him first the first question, Mr. Edises?

Mr. Edises: I think he testified to that, didn't he? I think he testified to that.

Mr. Tobriner: All right, I will withdraw that.

Q. (By Mr. Edises): There was such a determination, was there not?

(Testimony of Frank Marshall.)

A. Yes; that was at the following meeting, that was the following day; July 31, I believe it was.

Q. July 31? A. Yes.

Q. Now, let me see—as I understand it, the Stewards were laid off on the 30th; right?

A. That is correct.

Q. Now, then, my question is, when was the first discussion of economic action to bring about the return of the Stewards?

Trial Examiner Ruckel: Was there any at the meeting on the 30th?

The Witness: No, I don't believe there was, not on the 30th, no.

Mr. Edises: He testified he didn't remember that.

The Witness: No, on the 30th, as I stated, it was just the election of a four-man group to seek to re-establish [94] the men. The following day was the action taken by the membership not to return to work until the Stewards returned.

Q. (By Mr. Edises): Yes. And that was at the meeting, but was there some discussion among the leaders of the group before the meeting?

A. Not that I can recall, no.

Q. You are familiar with this document which I think is—well, we can mark it for identification as Board's Exhibit 8.

(Whereupon the document above referred to was marked Board's Exhibit 8 for identification.)

(Testimony of Frank Marshall.)

Q. (By Mr. Edises): Are you familiar with this document?

A. I recall seeing this, yes.

Q. Do you remember when you first saw that?

A. I can't recall whether it was directly after the meeting with Mr. Railey on the morning of July 31 or just before, but I believe a copy of this was handed to me by either Mr.—one of the Union officials. I don't recall which one it was; some Union official.

Q. In any event, it was before the strike, was it not?

Mr. Rowell: Now, that is objected to, the use of the word "strike." There has been no testimony as to a strike.

Mr. Edises: May I ask, through the Examiner, that Mr. Rowell suggest what word he would like me to use and I will use it. Personally, I think I know what a strike is, and I [95] think the witness knows what a strike is, but if he wants some other word I will use it.

Trial Examiner Ruckel: If there is any purpose to be served by not using it, then let's use some other word, cessation of employment, or withdrawal of labor power, or not working.

Mr. Edises: May I have the last question?

Mr. Rowell: The question was objected to.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): It was before the withdrawal of employment, was it not?

(Testimony of Frank Marshall.)

A. For the rest of the employees or for myself now are you asking that question?

Q. For yourself.

A. Well, I never went out myself; I was taken out, so it had no bearing on me whatsoever.

Q. No, I think you misunderstand me. I mean you saw this document, Board's Exhibit 8 for identification?

A. I was already out of work when that was handed to me.

Q. And what time was that?

A. I said the forenoon of July 31, 1945.

Q. Before the remainder of the employees ceased working, is that right?

A. That is correct.

Q. Now, do you know, Mr. Marshall, or can you enlighten [96] us as to what should be referred to in this document when it states, "Any strike at this plant will bring an immediate directive from the Regional War Labor Board to return to work?"

Could you indicate for us what the basis for that statement might have been?

Mr. Rowell: That is objected to.

Mr. Royster: I will object.

Mr. Rowell: That is objected to on the grounds obviously the document is one issued by Mr. Edises' client, the CIO Union. They know——

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Now, let's go on to this meeting with Mr. Railey. That was on July 30 at 2:00 P.M., was it not?

A. That is correct.

(Testimony of Frank Marshall.)

Q. Did you say you were present at that meeting? A. I was.

Q. You testified that Mr. Duarte handed copies of charges to certain employees; is that correct?

A. That is correct.

Q. Who were those employees?

A. The five Stewards.

Q. Including yourself?

A. Including myself.

Q. Were any charges handed to anybody else?

A. Not that time that I know of.

Mr. Rowell: Mr. Examiner, just as a matter of protection against some other legal problem that might come up, I want to ask that the questions and the answers with regard to copies of charges be either stricken, or that Mr. Edises state that he is not asking that we be bound by testimony as to whether they were actually copies of charges as required by law and by the Constitution and By-laws of the Union.

Mr. Edises: Well, Mr. Examiner, may I point out that this witness testified to being handed this copy of charges on direct examination by the Board. I didn't bring this up.

Trial Examiner Ruckel: That is my recollection. He testified to it already.

Mr. Rowell: Well, we will take it on redirect.

Q. (By Mr. Edises): Now, I want to ask you about this Employees Welfare Association. Did

(Testimony of Frank Marshall.)

you participate in any discussion about the name of that organization?

A. Yes, I believe I did.

Q. And what was said as to the reason for naming it Employees Welfare Association?

Mr. Royster: I don't see the materiality of this, Mr. Examiner.

Trial Examiner Ruckel: What is the materiality of this?

Mr. Edises: Well, I am interested in the question of [98] whether this is a labor organization, your Honor.

Trial Examiner Ruckel: Well, what has the name got to do with it?

Mr. Edises: Well, this: I am familiar with a number of Employees Welfare Associations which have nothing to do with the functions of labor organizations.

Trial Examiner Ruckel: Well, the similarity in name certainly cannot imply similarity in function.

Mr. Edises: Well, perhaps that may be true, but I think the question of the name of the organization, the name, after all, has some significance, showing the purpose of an organization.

Trial Examiner Ruckel: Well, an Association frequently has almost come to be synonymous with a company-dominated union, but that is not your contention here, is it?

Mr. Edises: Well, I think we should be permitted to determine why they chose the name "Employees Welfare Association" rather than some

(Testimony of Frank Marshall.)

other name. It may definitely have a bearing on the functions of the organization.

Mr. Royster: Well, he is getting at the functions through the back door there, Mr. Examiner.

Mr. Edises: Well, this is cross-examination.

Mr. Royster: Certainly it is.

Mr. Edises: And in cross-examination sometimes it is advisable to go through the back door. [99]

Trial Examiner Ruckel: I don't see the relevancy. Objection sustained.

Mr. Edises: Exception.

I think that is all.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: Nothing further.

Mr. Rowell: One question.

Redirect Examination

By Mr. Rowell:

Q. Do you know, as a matter of fact, whether that purported copy of a charge which was delivered to you by Mr. Duarte was actually the full and correct copy of charges filed with the Union?

Mr. Edises: I object. How on earth can he know that?

Mr. Rowell: Obviously he doesn't. I just want him to tell us he doesn't.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: I submit if he has a copy of the charge I would be glad——

Trial Examiner Ruckel: All the question means, I think, is a purported copy of the charges.

(Testimony of Frank Marshall.)

Mr. Rowell: That is right. But I don't want to take any chances of having him be faced with this testimony in some other proceeding.

Mr. Edises: Let's ask him.

Do you have a copy of the charge? I mean, do you have [100] the copy that was handed to you?

The Witness: By Mr. Duarte, yes.

Mr. Edises: Well, could you produce it?

Mr. Rowell: No, I object to the production. It is not material at all to the proceeding.

Mr. Edises: I didn't raise the question. It is up to you.

Trial Examiner Ruckel: If they were offered and received it would be material, his testimony that that is what he was handed. He is not called upon to interpret its contents.

If you have that with you, I would like to see it, please.

The Witness: I will look for it. (Handing document)

Trial Examiner Ruckel: Let it be marked.

Mr. Edises: Yes. Will you mark this for identification as ILWU Exhibit 1.

(Thereupon, the document above referred to was marked Intervener's Exhibit 1 for identification.)

Q. (By Mr. Edises): Will you identify this, Mr. Marshall? I am showing you ILWU 1 for identification?

Is that the charge that was handed to you in the meeting you have just testified to?

(Testimony of Frank Marshall.)

A. (Examining document): Yes, that is a copy by Mr. Duarte.

Mr. Edises: I offer that. [101]

Mr. Rowell: No objection.

Mr. Royster: No objection.

Mr. Hecht: May I see that?

(The document was handed to Mr. Hecht.)

Trial Examiner Ruckel: It may be received.

(Thereupon, the document heretofore marked Intervener's Exhibit 1 for identification was received in evidence.)

Q. (By Mr. Edises): Oh, by the way, Mr. Marshall, were minutes taken of the meeting of July 26th? A. I don't remember.

Q. Were minutes taken of the meeting of July 30? A. Yes.

Q. Do you know who has those minutes?

A. No.

Q. Do you think you could locate them?

Mr. Rowell: Well, if you want them, I think I will ask among the people here and see if they are available.

Mr. Edises: Yes, I would like to see them.

(Mr. Rowell handed the document.)

Mr. Edises: Will it be stipulated that these are the minutes of the July 30 meeting referred to in the testimony?

Mr. Hecht: Mr. Edises, I suppose you mean that it reflects what Brother Thompson recorded, but

(Testimony of Frank Marshall.)

does not necessarily reflect what actually happened in the meeting, is that it? [102]

Mr. Edises: Well, they are the official minutes, I suppose. If they are the official minutes of the meeting they are relevant as evidence of what went on at the meeting. That is my understanding.

Mr. Hecht: Well, I don't wish to be bound by anything that is stated——

Mr. Edises: Well, I assume the Company is not bound by anything that we offer. Isn't that correct, Mr. Examiner?

Mr. Royster: You asked for a stipulation on those minutes.

Trial Examiner Ruckel: Well, I am assuming nobody is bound by the statements made at the meeting and which may be found in the minutes.

Is that what worries you?

Mr. Edises: I am not worried.

Trial Examiner Ruckel: It seems to me that no party other than the party that makes the minutes is bound by them.

Mr. Edises: Well, my question was whether these are the official or, at least, a true copy of the official minutes of the meeting of the Employees Welfare Association on July 30.

Trial Examiner Ruckel: Well, can that be answered? It might be all of that and still be incorrect as reflecting what happened. [103]

Mr. Edises: I appreciate that.

Mr. Royster: I would rather not stipulate to these, Mr. Edises, for the reason that while I have

(Testimony of Frank Marshall.)

every reason to believe they are correct Mr. Thompson, the recording secretary, will be here tomorrow and can identify them.

Mr. Edises: Yes. Maybe Mr. Marshall can.

Q. (By Mr. Edises): Can you identify these, Mr. Marshall? A. No.

Mr. Edises: Could we have these marked for identification?

Mr. Royster: That is CIO No. 2.

Trial Examiner Ruckel: No. 2.

(Thereupon the document above referred to was marked Intervenor's Exhibit No. 2 for identification.)

Q. (By Mr. Edises): Now, do you know if there were any minutes of the July 31 meeting?

Mr. Royster: I have them.

Mr. Edises: You have them?

Mr. Royster: Yes (handing document).

Mr. Edises: Will you mark this for identification, please, as ILWU Exhibit 3?

Trial Examiner Ruckel: Mark it as Intervenor's Exhibit 3 for identification.

(Thereupon the document above referred to was marked Intervenor's Exhibit No. 3 for identification.) [104]

Mr. Edises: That is all.

Trial Examiner Ruckel: Any further questions?

Q. (By Mr. Hecht): Mr. Marshall, you say you

(Testimony of Frank Marshall.)

attended the meeting of September 3; that is correct, isn't it? I mean of July 30?

A. That is correct.

Q. Did you at the meeting of July 30 hear the reading of the minutes made of the meeting of July 26? A. I don't remember.

Q. Will you say that those minutes were not read?

A. I believe I stated a few minutes ago to the best of my knowledge I don't believe there was any minutes taken of the meeting of July 26.

Mr. Hecht: All right, that is all.

Trial Examiner Ruckel: That is all.

Mr. Royster: That is all.

(Witness excused.)

Trial Examiner Ruckel: We will recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Are the parties in agreement on the stipulation which the reporter has had dictated and which she has read to us off the record?

Mr. Hecht: So stipulated for the respondent.

Mr. Edises: So stipulated for the ILWU.

Mr. Rowell: And the charging union stipulates.

Mr. Royster: So stipulated for the Board.

Trial Examiner Ruckel: Will you spread that on the record, then, as you have read it back to us?

(The stipulation appears in the following figures and words to-wit:)

“It is hereby stipulated by and among counsel for the Board, counsel for the respondent, counsel for the International Chemical Workers Union, and counsel for the ILWU, that on July 26, 1945, Clyde W. Haynes, David Luschsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, with other employees of the respondent, met at a restaurant in Oakland, California, discussed severance of their relationship and the relationship of other employees of Colgate-Palmolive-Peet from the ILWU, and discussed further the formation of Colgate-Palmolive-Peet’s Employees Welfare Association. Approximately 28 to 30 employees in all, including the nine above named, attended this meeting.

“It is stipulated that at the time the meeting was held the respondent had no knowledge that it was being held. The participants in this meeting voted or resolved that a further meeting be held on July 30, 1945, to which all employees of Colgate-Palmolive-Peet within the bargaining unit at that time represented by the ILWU would be invited, at which meeting opportunity would be given the [106] employees to act upon a motion to withdraw from the ILWU and to form Colgate-Palmolive-Peet Employees Welfare Association.

“Following this meeting, on July 28, 1945, a Saturday, the following notice was posted on respondent’s bulletin boards and came to the attention of Charles Wood, Purchasing Agent of the Company:

“Notice of Meeting: Special meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, Berkeley, California, across from Burbank School, at 4:15 p. m., Monday, July 30, 1945.”

“Information as to the posting of this notice and its contents came to Mr. Wood late in the afternoon of July 28, 1945, by means of a telephone call received by him from Mr. Altman, Plant Superintendent.

“On July 30, 1945, a Monday, the Company received a letter from the ILWU bearing date of July 30, 1945.

“This letter is hereby entered in evidence by stipulation as Board’s Exhibit 3.

“The individuals named in the letter, who at that time constituted the ILWU Stewards at the respondent’s plant, were called to the office of Superintendent Altman where Vice President Railey advised him of the receipt of the letter and advised them further that they could no longer [107] work for the Company until their difficulty with ILWU had been adjusted.

“Immediately following this notification to the five Stewards named in Board’s Exhibit 3, ILWU representatives distributed throughout respondent’s plant a bulletin which is hereby offered in evidence as Board’s Exhibit 4.

“At 4:15 on the afternoon of July 30 a substantial majority of respondent’s employees met at the Finnish Hall in Berkeley, California. Official min-

utes of the meeting are in evidence as Intervenor's Exhibit 2.

"After the close of the meeting telegrams were sent to the ILWU and to the Company, and I hereby offer them in evidence as Board's Exhibits next in order. Telegram to ILWU will be Board's Exhibit No. 5, and the telegram to the company will be Board's Exhibit No. 6.

"On July 31, 1945, Thompson, Lonnberg, Olsen, and Sherman went to the office of Vice President Railey and requested the reinstatement of the five Stewards named in Board's Exhibit 3. This request was refused.

"Mr. Railey replied that the five Stewards had been suspended by the ILWU, and that in accordance with the terms of the contract then existing between the ILWU and the Company, which is hereby offered in evidence as Board's Exhibit 7, the Company had no choice but to suspend the Stewards from their employment. [108]

"On the morning of July 31 ILWU representatives caused to be circulated among respondent's employees at the plant a bulletin, which is hereby offered in evidence as Board's Exhibit 8.

"At approximately noon on July 31, 1945, a substantial majority of respondent's employees left the plant and attended a meeting. Official minutes of this meeting are in evidence as Intervenor's Exhibit 3.

"At the invitation of the employees Vice President Railey addressed them and urged them to re-

turn to work. Other proceedings took place about which there is dispute.

“The employees at the meeting reaffirmed their vote not to return to work until the Stewards were reinstated. The meeting was recessed and resumed on the evening of August 2.

“At the meeting of August 2, which was attended by a substantial majority of respondent’s employees, a motion was approved to dissolve Colgate-Palmolive-Peet’s Employees Welfare Association, and to affiliate with International Chemical Workers Union, A.F. of L. A motion to return to work on August 3 was made and carried.

“On August 3, 1945, the employees of the respondent, with the exception of the five Stewards and the four committeemen, Thompson, Lonnberg, Olsen and Sherman, returned to work. [109]

“The actions of the employees of the respondent as described on July 31, August 1, and August 2, 1945, were without the sanction of the ILWU.”

Mr. Rowell: May we have a stipulation that all those exhibits were offered in evidence, and I ask for a ruling by the Examiner as to their admissibility?

Trial Examiner Ruckel: Yes. Board’s Exhibits 3, 4, 5, 6, 7 and 8, and Intervener’s Exhibit 2 are received in evidence.

Mr. Rowell: I think also Intervener’s Exhibit 3, Mr. Examiner.

Mr. Edises: Intervener’s Exhibits 2 and 3, we will offer those.

Trial Examiner Ruckel: Intervener's 2 and 3 are received in evidence.

(Thereupon, the documents above referred to were marked Board's Exhibits 3, 4, 5, 6, and 8 and were received in evidence.)

(Thereupon, the documents heretofore marked Intervener's Exhibits 2 and 3 for identification were received in evidence.)

Mr. Royster: Now, Mr. Examiner, while it may be possible for us to arrive at further stipulations later on this afternoon, I have a witness who is here from Manteca, about 70 miles distant, who would find it very difficult to [110] return here tomorrow, and I would like very much to call him at this time.

Mr. Edises: We have no objections.

Mr. Hecht: No objection.

Mr. Royster: Mr. Lincoln Olsen.

LINCOLN FRANK OLSEN,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

A. Lincoln Frank Olsen, O-l-s-e-n.

Q. Where do you live, Mr. Olsen?

A. Right now I am living in Lathrop, California.

(Testimony of Lincoln Frank Olsen.)

Q. What is your occupation?

A. Machinist.

Q. You were employed by the respondent here, were you not? A. I was.

Q. And for what period?

A. From October 18, 1932, until July 31, 1945.

Q. And during that period were you a member of the ILWU?

A. I was a member of the ILWU from July 1, 1941, until July 31, 1945.

Q. Now, Mr. Olsen, it has been stipulated that there was a meeting of respondent's employees, you among them, at a [111] restaurant in Oakland on July 26, 1945. It has also been stipulated that there was discussion at that time concerning the formation of Colgate-Palmolive-Peet's Employees Association.

Did you participate in that discussion?

A. I didn't quite get that.

Trial Examiner Ruckel: Did you take part in that discussion?

Q. (By Mr. Royster): Do you remember the meeting of July 26 held at a restaurant?

A. Yes, I do, yes.

Q. And you attended that meeting, did you?

A. Yes, I did.

Q. Was there a discussion there of the formation of an Employees Welfare Association?

A. Yes, there was.

Q. Did you participate in that discussion, did you take part in it?

(Testimony of Lincoln Frank Olsen.)

A. Well, I was at the meeting, if that is what you mean.

Q. You heard the discussion?

A. I heard the discussion.

Q. Was there discussion as to the purpose of the Employees Welfare Association?

A. Well, to my knowledge, the purpose of the Employees Welfare Association was a temporary set-up to seek affiliations [112] with a strong international.

Q. Did you work on July 30?

A. Yes, I did.

Q. 1945? A. Yes, I did.

Q. Did you see any representatives of the CIO on that day?

A. Yes, I seen—in our building I seen two officials and a new appointed Steward.

Q. Now, when you say “our building,” what building do you refer to?

A. Well, I worked in the Seafoam Department, and offhand now what building that would be called I don't know.

Mr. Wood: “J”.

The Witness: “J” Building, that is right.

Q. (By Mr. Royster): Now, Mr. Olsen, I show you Board's Exhibit 4.

Have you seen that before?

A. Yes, this was handed out on July 30.

Q. By whom?

A. By those two officials that I was referring to and that new appointed job Steward.

(Testimony of Lincoln Frank Olsen.)

Q. Did you name the officials?

A. Could I name them?

Q. Did you name them? If you didn't name them, will you [113] give me the names of the officials?

A. Well, one was Business Agent Gonick, and the other, I don't know what his representation was, but I believe his name was Gleichman.

Q. Did you receive one of these notices, Board's Exhibit 4?

A. Personally from them I didn't, but I did get one.

Q. Is there a bulletin board in the "J" building where you worked?

A. There is a bulletin board in each department.

Q. Did you see Board's Exhibit 4 on any bulletin board?

A. I can't very well recall whether I did or not.

Q. Now, you attended the meeting of the Employees Welfare Association on July 30, 1945, did you not?

A. Yes, sir.

Q. Were you selected to perform any task at that meeting?

A. I was one of the appointees to represent the employees to present ourselves the next morning at Mr. Railey's office and try to reinstate the five Stewards that was suspended on July 30.

Q. Now, it has been stipulated that you and three others, who were named in the stipulation, did go to the respondent's plant on July 31, and have a conversation with Vice President Railey.

(Testimony of Lincoln Frank Olsen.)

Did you have a conversation with any ILWU representatives in Mr. Railey's presence on that date? [114]

A. Did I personally?

Q. Yes.

A. No, sir.

Q. Did you overhear any conversation on that day when Mr. Railey was present and representatives of the ILWU were present?

A. Well, I heard in that office that notices was made out to three of the parties that was appointed to that committee, and they did not know my name as yet, and that I would be served with one.

Q. Well, now, let's see if we can identify the persons who made that statement, if it is a statement.

A. That was made by Mr. Heide.

Q. Mr. Paul Heide?

A. Paul Heide, yes.

Q. And I believe it has already been testified that Mr. Paul Heide is a VicePresident, is that correct, of the ILWU?

A. Second Vice President.

Q. Second Vice President.

Now, just what did Mr. Heide say?

A. Well, offhand——

Q. (Interposing): Just your best recollection.

A. Well, all I could say is that he said that notices were already made out for three of the fellows, that he knew them and knew their past, but I was new to him and they [115] didn't have my name.

Q. Well, did anyone ask you your name?

(Testimony of Lincoln Frank Olsen.)

A. Well, I believe it was the President, Lynden.

Q. Mr. Lynden asked you your name?

A. Yes.

Q. And what did he do, if anything, after you gave him your name?

A. What he did after that I don't know, but I know I got a notice in the mail.

Mr. Royster: Mr. Edises, I have here a copy of a letter purportedly addressed to Mr. Olsen. I wonder if we can agree that the original of that letter was sent by the ILWU to Mr. Olsen?

Mr. Edises: Certainly.

Mr. Hecht (examining document): No objection.

Q. (By Mr. Royster): Mr. Olsen, I show you a writing which purports to be a copy of a letter addressed to you. Did you receive the original of that letter? A. Yes, I did.

Q. Can you tell me approximately when you received it?

Mr. Rowell: That is with reference to the meeting in Railey's office, isn't it?

Mr. Royster: Yes.

A. I think it was in the week of August—between the fifth and tenth. [116]

Q. (By Mr. Royster): It was subsequent, then, to the time of the meeting in Mr. Railey's office about which you testified? A. That is right.

Mr. Royster: I offer this in evidence, Mr. Ex-

(Testimony of Lincoln Frank Olsen.)

aminer, and ask that it be marked Board's Exhibit 9.

Mr. Rowell: No objection.

Mr. Edises: No objection.

Trial Examiner Ruckel: It will be received.

(Thereupon, the document above referred to was marked Board's Exhibit No. 9 and received in evidence.)

Q. (By Mr. Royster): Now, Mr. Olsen, after this conversation about which you testified you overheard the remarks of Mr. Heide and of Mr. Lynden, was there anything said to you or to the three men who accompanied you in your presence by Mr. Railey?

A. The only thing that I can recall is that he said that he couldn't put the five men back to work.

Q. Now, did you attend a meeting of the respondent's employees on the afternoon of July 31?

A. Yes, I did.

Q. Did Mr. Railey attend that meeting?

A. Yes, he did.

Q. He was invited to attend, was he not? [117]

A. He was invited to attend.

Q. Did he address the meeting?

A. He talked there for quite some time, but what he talked about, I was at the door and I didn't have much of a chance to hear his conversation.

Q. You didn't hear the conversation?

A. I heard some of it but——

Q. What did you hear?

(Testimony of Lincoln Frank Olsen.)

A. Well, I heard the part where he wanted us all back to work as soon as possible, wanted everything threshed out.

Q. Was there any vote taken down during the time that Mr. Railey was at the meeting?

A. There was a standing vote taken in his presence that the people were behind the five shop Stewards.

Q. Well, what was the motion?

A. The motion—well, my idea was that the motion was that the employees didn't—I mean, if the five Stewards weren't reinstated that the employees would continue their meeting until such time that they were reinstated.

Q. Now, it has been stipulated that all of the employees except you and eight others named returned to work on August 3.

Did you make any attempt to go back to work on August 3?

A. Well, we didn't make an attempt to go back to work, but [118] we called up. When I say "we", Mr. Sherman and myself called up Mr. Altman after the meeting.

Q. After what meeting?

A. The meeting on August 2, and told him that the plant—the employees were going to go back to work in the morning, and if we were to go back? And he said he was sorry, that we had been suspended and——

Q. (Interposing): Meaning you and Sherman?

(Testimony of Lincoln Frank Olsen.)

A. Yes; talking to me personally now he was.

Q. Yes.

A. And he said that "it would be better for you and I if we don't face one another and I tell you over the phone," so I accepted that as not being able to report to work the next morning.

Q. Well, since August 2, since this conversation with Mr. Altman, have you returned to the employer's plant?

A. Yes, we made a try at it, I would say, oh, around the middle of August.

Q. Who made a try at it?

A. The nine of us.

Q. That is the five Stewards—— A. Yes.

Q. And the four committeemen? A. Yes.

Q. And what did you do? [119]

A. We went down to the gate in the morning with our lunch pails and stood there until the first whistle blew. Then when the second whistle blew at 7:30 we walked into Mr. Altman's office, and while we was in there Mr. Altman walked out. Where he went I don't know, or I don't know if anybody else knows. But then a few minutes later I think one of the members of the nine called up Mr. Wood's office, I believe, and asked if we could talk to him, and Mr. Wood and Mr. Altman came over to Mr. Altman's office. And I believe it was Mr. Sherman was the spokesman, and asked Mr. Wood if they were hiring any help, that we were looking for a job. Mr. Wood told him he couldn't put us to work, that we were suspended. So there

(Testimony of Lincoln Frank Olsen.)

was nothing else for us to do. Some of the boys got their overalls and things and out the gate we went.

Q. Now, harking back to the 30th of July, Mr. Olsen, there was a meeting held at 4:15 in the afternoon.

Is there a night shift—or was there a night shift on that day due to work in the plant?

A. Yes, there was; there still is; I imagine there still is. There was a 24-hour shift.

Q. Was any attempt made to have the night shift employees attend this meeting?

A. Yes, there was.

Q. Can you tell us what that attempt was?

A. Well, I and Brother Luchsinger went into Mr. Altman's [120] office and asked him if there was a possibility of having a night shift layoff for a couple of hours and attend this meeting, and they could report back to work when the meeting was over.

Q. Did you receive a——

A. (interposing) And at the time two Supervisors were in the office.

Q. Who?

A. Cecil Carter and Don Stanberry. I heard myself personally that Mr. Carter told Mr. Altman that the kettleroom could shut down, and Mr. Stanberry said that he could see that the other buildings, the toilet department and those that were operating could go if they would report back at six o'clock.

(Testimony of Lincoln Frank Olsen.)

Q. Well, then, what did Mr. Altman say finally to your request?

A. He says that they would go.

Mr. Hecht: What was that? May I have that answer, please?

(The answer referred to was read by the reporter.)

Mr. Rowell: You mean they could go?

The Witness: If they wanted to go they could go.

Q. (By Mr. Royster): You jointed the A. F. of L., did you not, Mr. Olsen?

A. Yes, I did. [121]

Mr. Royster: I believe that is all.

Trial Examiner Ruckel: Any further questions from the A. F. of L.?

Mr. Hecht: I have just one question.

Mr. Rowell: No, I have no questions.

Trial Examiner Ruckel: For the Respondent?

Mr. Hecht: Yes, Mr. Examiner.

Cross Examination

By Mr. Hecht:

Q. Mr. Olsen, you were at one time a CIO Steward at the Respondent's plant, were you not?

A. Not a CIO Steward, no.

Q. An ILWU Steward?

A. No, I was never.

Q. You were never?

A. No. If you are referring back to 96 I was.

Q. 1936?

(Testimony of Lincoln Frank Olsen.)

A. No, 96 was the other local that was in there before they merged with ILWU.

Q. Mr. Olsen, do you recall whether at that restaurant meeting on July 26 any minutes were taken down?

A. Not that I can remember.

Q. Do you recall whether any minutes of the meeting of July 26 were read at the meeting of July 30?

A. Not that I can remember.

Q. Mr. Olsen, are you familiar with the agreement dated [122] July 9, 1941, between Colgate-Palmolive-Peet Company and Warehouse Union, Local 1-6, ILWU?

Mr. Rowell: Well, now, Mr. Examiner, I think this attempt was made before and objection sustained to this line of questioning.

Mr. Hecht: No, there was no objection sustained.

Trial Examiner Ruckel: I don't recall any objection to that. I am wondering if it is not redundant, though, I mean, we stipulated that this contract has been entered into.

Mr. Edises: Could it be stipulated—I suspect the purpose is to show the witness' familiarity with certain provisions. Could it be stipulated that this witness and the other witnesses who were among the nine were familiar with the terms of the contract?

Trial Examner Ruckel: Well, I was wondering what difference would it make if they weren't familiar with the terms? Here is the contract.

(Testimony of Lincoln Frank Olsen.)

Mr. Royster: There is no question but what it was in effect at this time.

Mr. Hecht: Off the record, if we may?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Let's go back on the record. Is there another question of the witness?

Mr. Hecht: Yes. [123]

Q. (By Mr. Hecht): Mr. Olsen, did you know that if you were not a member in good standing of the ILWU you could not work at Respondent's plant?

Mr. Rowell: Well, that question is objected to on the grounds previously stated, that it doesn't make any difference whether he knew it or not. The contract is in evidence, and nobody here is maintaining that it was not in effect. It speaks for itself.

Trial Examiner Ruckel: I will have to sustain the objection.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Q. (By Mr. Edises): Mr. Olsen, I hand you Intervener's Exhibit No. 2, which is in evidence, and this has been identified as the minutes of the meeting of July 30, 1945, which I believe you said you attended, did you not? A. Yes, sir.

Q. And I would like to have you look at the third paragraph of those minutes, this here (indicating), and read that and tell me if that comports

(Testimony of Lincoln Frank Olsen.)

with your recollection of what occurred at that meeting?

A. I told that gentleman there that I was the floorman on them meetings and I didn't hear a lot of them things that went on, so I couldn't very well give you a real answer on that. [124]

Q. Well, I want your answer to the best of your recollection, Mr. Olsen.

The minutes read:

"Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shops Stewards laid off by management at request of ILWU officials. If shop Stewards don't work, nobody works. Carried unanimously."

Do you remember if some such motion was made?

A. I believe it was if it is on the papers there.

Q. As a matter of fact, you were a member of a committee of four appointed to carry out the terms of this resolution, were you not?

A. Yes, I was.

Q. Yes. Now, did you vote on any of the resolutions that were presented at this meeting of July 30?

Mr. Tobriner: Objected to on the grounds it is immaterial whether he voted.

Trial Examiner Ruckel: What is the materiality? Hasn't it been covered by a stipulation?

Mr. Edises: No, not this point.

Mr. Tobriner: Well, there has already been admitted into evidence the minutes on it.

(Testimony of Lincoln Frank Olsen.)

Mr. Edises: I am asking him whether he personally voted for any of these resolutions.

Mr. Tobriner: I fail to see how that has any bearing [125] in this case.

Trial Examiner Ruckel: What is the materiality?

Mr. Edises: Well, it is in connection with our defense, in regard to these four so-called committeemen. I don't like to disclose—this is cross examination. I don't like to tip my hand, but I assure the Examiner that if the relevancy does not become apparent as the case progresses, I will gladly stipulate that it may be stricken.

Trial Examiner Ruckel: All right, with that understanding you may proceed.

Q. (By Mr. Edises): Now, the question was whether you voted on the resolutions that were presented?

A. Whether I voted on that one or not I told you I do not know.

Q. You don't remember?

A. Because I was on the floor and it was quite a job on the floor for one man that night.

Q. Now, did you participate in any of the discussion which took place at that meeting?

Mr. Tobriner: The same objection.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): Did you take part in any of the discussion? A. No, I didn't.

Q. You didn't say anything? [126]

A. No.

(Testimony of Lincoln Frank Olsen.)

Q. Now, did you participate in the work stoppage which took place?

A. Of course I did, because I was one of the committeemen there when I was appointed to go down there and find out whether or not these five men could go back to work, and that was the answer in that motion there. We got our answer from Mr. Railey that the five men could not go back to work, so automatically we had another meeting.

Q. All right. Now, after you got this answer from Mr. Railey what was the next thing that you did?

A. Well, offhand I would say from there the four of us was suspended, and we changed our clothes. We were in our work clothes at the meeting and we changed our clothes.

Q. I am speaking now after the meeting in Railey's office.

A. That is right. That ended around 11 o'clock, a little after 11, something like that.

Q. Then you changed your clothes?

A. Yes, sir.

Q. Did you have any conversation among you four at that time after your meeting with Railey?

A. Not that I can recall.

Q. Well, then, what was the next thing you did after changing your clothes?

A. Well, then we talked to Mr. Altman and Mr. Railey there [127] by Mr. Smith's office, and

(Testimony of Lincoln Frank Olsen.)

he said that he was sorry it all happened, and he wanted us back to work.

Q. Well, what else was said?

A. That is all I can remember that was said at that moment.

Q. Well, did anybody among your committee say anything?

A. Not that I can recall.

Q. He wanted you back to work. Well, I take it from that that at that time you were not at work, is that correct?

A. At that time we were suspended because Vice President Heide told Mr. Railey in his office that we would—the letters were in the mail, and all they had to do was put my name on the letter and I would receive one.

Q. All right. Now, what was the next thing you did after this conversation with Mr. Railey?

A. I believe I went out on the platform there and talked to the master mechanic.

Q. What was your conversation with him?

A. Well, I believe I told him that I had some tools in that department, and I was under the impression that I was coming back to work, and I was not going to pick them up, and the tools are still laying down there—I hope they are still there.

Q. Now, did you have any conversations with anybody about a work stoppage, or about the proposal not to work until the Stewards got back at that time? [128]

A. No, I did not.

(Testimony of Lincoln Frank Olsen.)

Q. Well, then what did you and the other members of the committee proceed to do about this resolution, about "nobody works" after you got your turndown from Railey? How did you go about putting this resolution into effect, what did you do?

A. (No response.)

Q. I am not trying to mislead you, Mr. Olsen, but you have testified that you went to Mr. Railey with the resolution about stopping work if these stewards weren't put back, and that thereafter there was a work stoppage. And now I want to know just how this work stoppage was put into effect. How did you pull the men, in other words?

Mr. Tobriner: I object to that question.

Mr. Rowell: Well, you mean pull the pin?

Mr. Edises: Pull the pin, you can use that expression.

Mr. Rowell: We will stipulate they pulled the pin.

A. We didn't pull any pin, or pull any men. When they seen us walk out without the results, why, you know what occurred yourself.

Mr. Edises: Now, I would like to have answer read, please.

(The answer referred to was read by the reporter.)

Q. (By Mr. Edises): I wish you would tell me what occurred? [129]

A. I was not there.

Mr. Rowell: Well, now, Mr. Examiner, there

(Testimony of Lincoln Frank Olsen.)

is no contest on these facts at all. Nobody is maintaining that these men didn't stop work.

Mr. Edises: I want to know how it happened. We certainly have a right to know those details.

Trial Examiner Ruckel: He may answer.

Mr. Edises: You may answer, Mr. Olsen.

A. If I may answer, I don't know what the real answer is because, like I stated back there, I was on the floor and I didn't know what the real discussion was, what would occur.

Q. (By Mr. Edises): Well, now, Mr. Olsen, you have testified you were in Mr. Railey's office, that he said nothing doing about putting the Stewards back, and you have also just testified, well, then, "we walked out, and when the employees saw there was no results, why, then something happened."

I want you to tell me just what happened.

A. Well, they walked out too, didn't they?

Q. Did you walk along like the pied piper and the employees along behind you?

A. Didn't they walk out too and the plant shut down at noon?

Q. That is what I want to know, just what happened. Did you say anything to the employees?

A. No, I didn't.

Q. Did any of the other committeemen say anything?

A. I don't know whether they did or not.

Q. Let's have your best recollection, Mr. Olsen.

A. I am using my best recollection right now.

Q. And you would like the record to show that you people just walked out of the office and that

(Testimony of Lincoln Frank Olsen.)

nothing was said, and that the employees then followed you out; is that what happened?

Mr. Royster: He didn't say that.

Mr. Tobriner: Objected to as argumentative, and a misstatement of the statement of the witness. I object to the question.

Trial Examiner Ruckel: Well, it may be stricken.

Tell us what happened. The employees walked out?

The Witness: 12 o'clock noon when the whistle blew they went into the meeting.

Q. (By Mr. Edises): What meeting?

A. That meeting of July 31.

Q. And who told them about that meeting?

A. Offhand it must have been voted on the night of the 30th when the committee was appointed.

Q. Well, now, Mr. Olsen, isn't it a fact that after you left Railey's office, you and the other members of your committee, you told the employees that you had not been [131] successful in getting the Stewards back, and that there was going to be a meeting at 12 o'clock noon; isn't that a fact?

A. I can't recall whether it is or not.

Mr. Edises: All right, that is all. Oh, just one other thing.

Q. (By Mr. Edises): Are you familiar with the ILWU's pledge not to engage in any strikes during the duration of the war?

Mr. Rowell: Well, now, that is objected to as immaterial.

(Testimony of Lincoln Frank Olsen.)

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: No, Mr. Examiner. I would like to say that the Union will demonstrate in the case of this employee and the three other members of the committee that the union action taken against them was predicated upon their participation in a wartime strike in violation of the pledge of the International Longshoremen's and Warehousemen's Union against engaging in any strikes in wartime. Now, that I submit is——

Trial Examiner Ruckel: Well, the question is as to his knowledge. What difference does his knowledge make?

Mr. Edises: Well, in this sense, Mr. Examiner: That if the evidence would show that this man had no knowledge that there was any "no strike" pledge by the ILWU, I, as one of the attorneys for the ILWU would immediately stand up in this court and recommend that this man be put back to work and be given every cent of back pay that he has lost because then he has been very unfairly dealt with, he has been most unfairly dealt with if he had no knowledge of the ILWU's "no strike pledge." On the other hand, if he did have such knowledge then there is a basis for the Union's action, and that is our case in regard to this man.

Trial Examiner Ruckel: Well, I would be surprised if anyone of the Union lacked knowledge of that pledge, it is the commonest sort of knowledge throughout that these "no strike pledges" were almost univervally in effect. I should think we

(Testimony of Lincoln Frank Olsen.)

could assume knowledge on the part of every employee of the existence of that pledge if, in fact, it did exist.

Mr. Edises: I would agree with you, your Honor, but I think the Board ought to have the benefit of the express statement of this employee. I would rather not hold him to any assumed knowledge of that "no strike pledge." I would like to give him an opportunity to testify himself as to whether he knew about the "no strike pledge."

Mr. Rowell: Well, Mr. Examiner, it likewise has appeared by the testimony of this witness that he was suspended before he ever went off work, so it could not have been the case in his case.

Mr. Edises: Oh, the resolution was passed on July 30, Mr. Rowell. [133]

Mr. Rowell: Regardless, the action that was purportedly taken, that is, the so-called leaving work action, occurred after this man had been suspended.

Trial Examiner Ruckel: I am going to sustain the objection on the grounds indicated.

Mr. Hecht: And, Mr. Examiner, now that you have sustained that objection, I think that is part of our case, and I will find it necessary, when it comes time to put on our case, if it comes to that, to have to subpoena Mr. Olsen from his present employment at Lathrop because I am going to ask him the same question in our case, make him our witness for the purpose.

Trial Examiner Ruckel: If there was a "no

(Testimony of Lincoln Frank Olsen.)

strike pledge" it is in the contract, is it not?

Mr. Edises: No, your Honor.

Mr. Hecht: No.

Mr. Edises: It was a matter of resolution passed by the Union, the Union's International Executive Board.

Trial Examiner Ruckel: Was it ever reduced to writing?

Mr. Edises: Yes, your Honor. We would introduce that but that would not in and of itself show knowledge on the part of this witness.

Trial Examiner Ruckel: Weren't the employees advised of that?

Mr. Edises: Certainly. [134]

Trial Examiner Ruckel: Probably by the Company and by the Union.

Mr. Edises: By the Union; certainly anybody who attended Union meetings knew about it.

Trial Examiner Ruckel: The only point I raise is to the materiality of his knowledge: I am not questioning the materiality of the existence of that resolution, and the Company was operating under it.

Mr. Edises: Only this, your Honor: If this man had no knowledge of the "no strike pledge" then he could not be culpable of violating the "no strike pledge" which is the basis on which he was found guilty by the Union.

Trial Examiner Ruckel: I don't know whether that follows or not, if they went on strike whether he knew of it or not, if the Union had agreed not to strike. Ignorance of the law is no excuse. How-

(Testimony of Lincoln Frank Olsen.)

ever, I think we could save time by letting him answer the question.

Mr. Royster: It might be pointed out too, Mr. Examiner, that this was not, as far as the evidence shows, an ILWU strike. They certainly had no responsibility for it.

Mr. Edises: I will say the ILWU had no responsibility for it.

Mr. Rowell: I will withdraw the objection to the question.

Trial Examiner Ruckel: Go back and restate the question. [135]

Mr. Edises: I will restate it.

Q. (By Mr. Edises): The question is, Mr. Olsen, were you aware at the time that this action took place of the ILWU's "no strike pledge" for the duration of the war?

A. Yes, I was, but I was not aware of the fact that I could get suspended by just walking into the Manager's office and asking for five men to come back to work.

Mr. Edises: I will ask that be stricken.

Mr. Tobriner: Just a minute. That is an answer to your question. You have opened it up.

Mr. Edises: What nonsense. That was volunteered, Mr. Examiner. It was not responsive to my question that I asked.

Trial Examiner Ruckel: It may be stricken.

Mr. Edises: Now, just one other matter.

Q. (By Mr. Edises): Mr. Olsen, did you par-

(Testimony of Lincoln Frank Olsen.)

ticipate in a meeting in July 1945 with representatives of the United Mineworkers Union?

A. No, I did not.

Mr. Edises: That is all.

Redirect Examination

Q. (By Mr. Rowell): Were you aware, Mr. Olsen, on the date Mr. Edises was talking to you about, that you could be suspended by the Union and discharged by the Company by [136] merely walking in and asking for the reinstatement of five employees?

Mr. Edises: I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: That is all.

Mr. Royster: That is all.

Mr. Tobriner: One more question, Mr. Olsen.

Mr. Edises: Just a moment.

Q. (By Mr. Tobriner): The time you were suspended——

Mr. Edises (interposing): I want to interpose an objection here. It seems to me it is customary in trial procedure, Mr. Examiner, to have one counsel for each party. Now, if we are going to depart from that procedure I submit we ought to have an understanding on that point because in the interest of the orderly conduct of the trial I think we are entitled to have not more than one attorney ask the question.

Mr. Rowell: That is perfectly agreeable.

(Testimony of Lincoln Frank Olsen.)

Trial Examiner Ruckel: Mr. Royster is the only attorney of record with the Board.

Mr. Tobriner: May I ask the question or shall I ask Mr. Rowell to ask the question?

Trial Examiner Ruckel: You are not of record. Do you wish to become of record?

Mr. Rowell: Yes, I think he is. [137]

Mr. Royster: Haven't you entered an appearance?

Mr. Rowell: I made an appearance. Mr. Tobriner is representing the International Chemical Workers Union, the charging union, and I, Mr. Rowell, represent them also. We both represent the same union. We are perfectly agreeable to having one or the other of us and not both ask questions.

Trial Examiner Ruckel: Well, is his appearance of record?

The Reporter: Yes, sir.

Trial Examiner Ruckel: There is no objection I know of to counsel sharing the labor of asking questions.

Mr. Edises: Well, may I differ with you respectfully, your Honor?

I have on many occasions witnessed insistence on the part of courts that only one counsel conduct the examination, one attorney for each side. The reason is that it gives the party two cracks, so to speak, to one for the other side. It also makes for more orderly conduct of the trial.

Trial Examiner Ruckel: Well, I agree with all that, but it is counsel's right, I think, to ask ques-

(Testimony of Lincoln Frank Olsen.)

tions if he wants, and they can divide the labor any way they wish. I would appreciate it if, in general, the examination be conducted by the same counsel.

Mr. Tobriner: Oh, I won't ask the question, Mr. Trial [138] Examiner.

Trial Examiner Ruckel: Are there any further questions?

Mr. Royster: Nothing further.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Mr. Smith.

HARRY A. SMITH,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

A. Harry A. Smith.

Q. Where do you live, Mr. Smith?

A. Walnut Creek.

Q. What is your occupation?

A. Present?

Q. Present.

A. At present I am a laborer.

Q. And you were employed by the respondent, were you not? A. Yes, sir.

Q. For what period of time did you work for the respondent?

A. I went to work there October 15, 1930.

(Testimony of Harry A. Smith.)

Q. And when were you last employed? [139]

A. Up until July 30, 1945.

Q. July 30, 1945? A. Yes, sir.

Q. Were you a member of the ILWU?

A. I was a member, originally joined the ILA, and we went into the ILWU in 1938, I believe.

Q. And how long did you remain a member of the ILWU?

A. Up until the time of my suspension.

Q. And that was when? A. July 30.

Q. Did you hold any office in that organization?

A. I spent one year on the Executive Board, 1939 or '40. I am not sure.

Q. Did you ever hold a position of steward?

A. I held a steward's position in the plant for two consecutive terms, ending with my suspension.

Q. And when was the first term?

A. 1944.

Q. For the calendar year?

A. Well, the election was along in May, 1943.

Q. You were elected in 1943?

A. And also re-elected in 1944.

Q. And was there any election held with respect to your job in 1945? A. No. [140]

Q. Not prior to your suspension?

A. Not prior to that time.

Q. Did you attend the meeting of July 26?

A. I did.

Q. At the restaurant? A. I did.

Q. Did you invite anyone to attend that meeting?

(Testimony of Harry A. Smith.)

A. I talked to various ones about it. Whether I personally invited anyone, I don't recall.

Q. Do you recall a discussion at that meeting of the Colgate-Palmolive-Peet Employees Welfare Association? A. I do.

Q. Did you participate in that discussion?

A. I listened mostly.

Q. Was the purpose of the Employees Association stated in this discussion?

Trial Examiner Ruckel: Hasn't that been gone over now?

Mr. Royster: It has been.

Trial Examiner Ruckel: Is it worth while going over this again?

Mr. Rowell: Well, nobody will stipulate it was a labor organization.

Trial Examiner Ruckel: I don't know what value the stipulation might have. I suppose these are introductory, but I wonder if we can't just jump right through them. Or if [141] it isn't covered by the stipulation——

Mr. Rowell: Well, it is not covered by the stipulation that that was a labor organization.

Mr. Royster: That is the only purpose in asking the question.

Mr. Rowell: If counsel for the Board doesn't want to go into it, I will ask a few questions along the same line in order to get it proved.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

(Testimony of Harry A. Smith.)

Trial Examiner Ruckel: On the record.

Mr. Royster: Well, may the witness answer my last question?

Trial Examiner Ruckel: All right. Read the last question.

(The question referred to was read by the reporter.)

A. The name, I believe, is what you are getting at?

Q. (By Mr. Royster): No. I am asking for the purpose of the——

Mr. Rowell: That is what Mr. Edises is getting at.

A. I will answer to the best of my ability.

Trial Examiner Ruckel: What is the purpose of this group?

The Witness: The purpose of this group was mainly—the organization was mainly to hold the group together and [142] give them a name while we were seeking affiliations with some other organization.

Q. (By Mr. Royster): What other kind of organization?

A. Some other union, to be explicit.

Q. Now, Mr. Smith, were you in Mr. Railey's office on July 30? A. I was.

Q. And what took place there?

A. We were called in at approximately two o'clock, and there we were confronted by Mr. Railey,

(Testimony of Harry A. Smith.)

Mr. Altman and five members, I believe, of the Warehouse Union.

Q. By "five members" you mean other employees?

A. No, pardon me. Five officials. And at that time Mr. Railey told us that he had been notified by the union that we were no longer in good standing, and he would have to suspend us until such time as we are in good standing with the CIO.

Q. When you say "us" are you referring to the——

A. Five stewards.

Q. Five stewards. Did you have any conversation with any of the ILWU representatives in Mr. Railey's presence?

A. Not at all.

Mr. Edises: Did he fix the date of this?

Mr. Royster: July 30, 2:00 p.m.

Q. (By Mr. Royster): Did Mr. Railey tell you why you were [143] suspended from the ILWU?

Mr. Hecht: That has been asked and answered, I think.

Trial Examiner Ruckel: Do you have an objection?

Mr. Hecht: No. Pardon me.

Mr. Edises: I don't think that has.

A. Nothing outside of the fact that we were not in good standing with the union.

Q. (By Mr. Royster): You attended the meeting of employees on the afternoon of July 30, did you not?

A. I did.

Q. Have you made any attempt to secure reinstatement?

(Testimony of Harry A. Smith.)

A. On August 17 I returned to the plant accompanied by the—in the company of the nine—eight other members that were suspended, and asked for reinstatement.

Q. And did you ask that reinstatement of Mr. Altman and Mr. Wood?

A. Mr. Sherman was our spokesman and he asked Mr. Wood.

Q. And what answer were you given?

A. It was impossible for them to put us back to work.

Mr. Royster: I believe that is all.

Trial Examiner Ruckel: Any further questions?

Mr. Rowell: I have nothing.

Trial Examiner Ruckel: For the respondent?

Mr. Hecht: Yes, Mr. Examiner.

Cross Examination

By Mr. Hecht:

Q. Mr. Smith, I think you testified that you have been a steward, and also held another position. I don't recall—what was your other position?

A. On the executive board of the union.

Q. On the executive board. Do you have knowledge of a certain contract dated July 9, 1941, between the respondent and the ILWU?

A. I have.

Mr. Rowell: Well, I make the same objection to this contemplated line.

Mr. Hecht: He has answered the question.

Mr. Rowell: Well——

The Witness: I am sorry.

(Testimony of Harry A. Smith.)

Trial Examiner Ruckel: The answer may stand.

Mr. Rowell: Well, I will make an objection to the next question.

Q. (By Mr. Hecht): Do you know, Mr. Smith, that under Section 3 of the contract you cannot work for the respondent unless you are in good standing with the ILWU?

Mr. Rowell: The same objection as to the previous question of a previous witness.

Trial Examiner Ruckel: I will allow it this time, but I think we can assume that the employee has knowledge of it. Even so, as I pointed out, it is immaterial. [145]

Mr. Rowell: Well, now, are you going to ask this question of every witness that goes on the stand?

Mr. Hecht: I certainly am, Mr. Rowell.

Mr. Tobriner: Did I understand the Trial Examiner now to rule that it was admissible?

Trial Examiner Ruckel: I said he might answer.

Mr. Tobriner: I understand the ruling previously was to the contrary.

Trial Examiner Ruckel: Well, to be consistent, I should not have him answer, but counsel for the company is very interested in it, and I thought that maybe he might cease and desist in asking further witnesses if I let him ask this witness.

Mr. Hecht: I won't ask it of other witnesses if I can get a stipulation, Mr. Examiner, that the contract binds and applies to all the complainants whether they had knowledge of it or not.

(Testimony of Harry A. Smith.)

Mr. Tobriner: Well, the contract speaks for itself, Mr. Hecht. Aren't you belaboring a legalism?

Mr. Hecht: No, I don't think so.

Mr. Edises: Well, Mr. *Edises*, I feel that the stipulation that counsel for the company is asking for is one that asks for a legal conclusion, and it would be, perhaps, a little broad for that reason. If I could suggest that there be a much less sweeping stipulation to the effect [146] that the witnesses knew there was a clause in the contract providing that only members of the ILWU in good standing could be employed at the plant, I think that they all did that, and certainly there could be no prejudice to anybody from any such stipulation.

Mr. Royster: I don't see anything wrong with it.

Mr. Hecht: I would be agreeable to such a stipulation.

Mr. Tobriner: We don't see any materiality to it. Suppose they did know there was a clause, how does that affect this case?

Trial Examiner Ruckel: Stipulate to it anyway and make your reservation as to its materiality.

Mr. Royster: I would have to make a reservation with respect to one of the alleged 8 (3's), that is, Rose Gilbert. With the exception of her I would stipulate.

Mr. Hecht: That is agreeable, Mr. Royster.

Trial Examiner Ruckel: Well state the stipulation, then.

Mr. Edises: Would you read what I proposed there?

(Testimony of Harry A. Smith.)

(The stipulation referred to was read by the reporter.)

Trial Examiner Ruckel: May we have that stipulation then, with the exception of this young lady?

Mr. Hecht: Certainly, that is agreeable with me.

Mr. Edises: It is agreeable with me.

Mr. Royster: The Board will stipulate except as to [147] Rose Gilbert Schneider.

Mr. Tobriner: Our position is, sir, that this is immaterial, and that we think the original rulings of the Trial Examiner were proper, and consequently we don't feel free from any standpoint of our clients to make any such stipulation. In other words, we feel that it is not up to us to take the burden of that stipulation.

Trial Examiner Ruckel: I don't see why the previous ruling of the Trial Examiner—you could make a reservation as to its materiality. If it is a fact, let's get the fact and I will make the disposition of its materiality.

Mr. Tobriner: I don't know it is a fact as far as these witnesses are concerned. I wouldn't assume the responsibility of speaking for them. I don't think it makes a bit of difference, and I think that Mr. Hecht's position is utterly unsound. If he is going to persist in it, then let him persist in it as far as I am concerned.

Trial Examiner Ruckel: Well, there is no stipulation. I will let the witness answer this question. I can't say what I will do with future witnesses, but I am firmly of the opinion that it makes no

(Testimony of Harry A. Smith.)

difference whether they knew it or not. They were all under the contract, at least as to its provisions.

Mr. Hecht: Let me state this: It seems to me that this attempt at reinstatement, at seeking employment again [148] at the plant is a pure sham in view of the fact that all of these people knew, at least the ones that were stewards who had been members of the executive committee, that it was a mere gesture to go into ask Railey or Altman for reinstatement in view of a contract they knew existed.

Mr. Rowell: Well, do you maintain that these people were, as a matter of fact, not in good standing in the union?

Mr. Hecht: I don't maintain that they knew they were not in good standing.

Mr. Rowell: They don't know it at the present time. We maintain they are still in good standing.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Now, let's proceed with this witness and ask him, if you want, if he knew of this provision of the contract.

Mr. Hecht: All right.

Q. (By Mr. Hecht): Mr. Smith, let me show you this contract, which is Board's Exhibit No. 7, and will you look at Section 3.

Mr. Tobriner: Our objections, I take it, will run to this whole line of questioning?

Trial Examiner Ruckel: Yes. There is only one question yet. We are still having trouble with that. [149]

(Testimony of Harry A. Smith.)

A. (Examining document): May I answer that with a "Yes" or "No", or can I qualify my statement?

Trial Examiner Ruckel: You can qualify your statement.

Mr. Hecht: Surely.

The Witness: I will answer that I am perfectly aware of that statement in there, but I will question what is meant by "good standing."

Q. (By Mr. Hecht): That is perfectly all right with me, Mr. Smith. However, on August 17, 1945, when you applied for re-employment you knew such a clause existed in this contract?

A. Certainly.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Smith, counsel asked you to state the purposes of the Employees Welfare Association, and you answered.

Now, I would like to ask you whether there was any purpose connected with this word "welfare"?

A. To answer that I would say directly that our union affairs were very closely related to the welfare of the people in the plant, and I think it can be so construed.

Q. And did you state that at this meeting on July 26?

A. I had nothing to say, I believe, at that meeting.

Q. So that what you are stating now is simply your opinion, is that right. [150]

A. My opinion.

(Testimony of Harry A. Smith.)

Q. Did anybody say anything about "welfare" at this meeting?

A. There was discussion regarding what to call the group, and that was decided on. Just exactly what was said I do not recall. It was some time ago.

Q. Were you present when the employees walked out at noon on July 31? A. No.

Q. You were not present? A. No.

Q. Did you participate in any meetings during the walkout, any meetings of the employees?

A. Yes, I attended them all.

Q. You attended them all? A. Yes.

Q. And did you participate in them?

A. Very little, because I felt that it was not my place to participate as the rest of the employees were voting on regarding whether they would back up these stewards or not.

Q. Did you vote yourself?

A. I certainly did not.

Mr. Edises: That is all.

Mr. Hecht: Just one question, Mr. Smith, that I forgot [151] to ask you.

Q. (By Mr. Hecht): Do you recall whether there were any minutes made of the action taken at the meeting of July 26? A. I do not recall.

Q. Did you attend the meeting of July 30?

A. I did.

Q. Do you recall whether any mention was made of such minutes at the meeting of July 30?

A. I do not recall.

Mr. Hecht: Thank you. That is all.

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

You have no other witnesses here that you are anxious to call this evening?

Mr. Royster: No, none that I must call this evening, Mr. Examiner.

Trial Examiner Ruckel: We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:45 p.m. an adjournment was taken to Wednesday, February 6, 1946, at 9:30 a.m.) [152]

[Title of Board and Cause.]

Wednesday, February 6, 1946.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 a.m. [153]

PROCEEDINGS

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Royster: Call Mr. Albert Zulaica, Mr. Examiner.

ALBERT ZULAICA,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address for the

(Testimony of Albert Zulaica.)

record, Mr. Zulaica? A. Albert Zulaica.

The Reporter: Will you spell your last name, please?

The Witness: Z-u-l-a-i-c-a. 2419-A Tenth street.

Q. (By Mr. Royster): What city?

A. Berkeley.

Q. What is your occupation, Mr. Zulaica?

A. Well, I was a leaderman there at the plant.

Q. Your occupation now?

A. Well, I am not working right now.

Q. And you were employed by the respondent?

A. Yes, I was.

Q. And for what period of time were you employed?

A. From February 20, 1928, to September 1, 1945.

Q. Were you a member of the CIO union there?

A. Yes, I was.

Q. And for how long were you a member?

A. Well, ever since they have been in control of the plant.

Q. And in what department were you employed?

A. The Toilet Department.

Q. Do you know an ILWU representative by the name of Gonick, Lewis Gonick?

A. Yes, I do.

Q. Do you know Ed Bopp?

A. Yes, I do.

Q. Who is Ed Bopp?

A. Well, he is present right now. I think he is

(Testimony of Albert Zulaica.)

a leaderman there right now on the framing department.

Q. As far as you know, did he hold any office in ILWU? A. He is now.

Q. What is that?

A. He was not at the time.

Q. Well, what is he now?

A. He is a steward, I believe.

Q. Now, on July 30, 1945, do you know whether or not he held any office in the ILWU?

A. Well, he was appointed that day.

Q. Appointed what? A. A steward.

Q. On July 30, 1945, did you have a conversation with Mr. [157] Gonick and Mr. Bopp?

A. Well, it was not really a conversation. They came over to me, and Mr. Gonick pointed to Bopp, he says, "This is your new steward," and handed me a leaflet, you know, a warning leaflet. He says——

Q. (Interposing) Well, now, just a moment, Mr. Zulaica. You say that a leaflet was handed to you.

I show you Board's Exhibit 4. Is that the leaflet you have referred to?

A. (Examining document) Yes, it is.

Q. And where did this occurrence take place?

A. In the Toilet Department, right on the floor there.

Q. And about what time of the day was it?

A. Oh, it must have been about, oh, about

(Testimony of Albert Zulaica.)

twenty-five minutes to three or twenty minutes to three.

Q. In the afternoon? A. In the afternoon.

Q. And was there anything said to you when this leaflet was handed to you?

A. Yes, Mr. Gonick says—handed me that leaflet and he says, “I wouldn’t go to the meeting if I were you,” he says, “because you know you will lose your job.”

Q. Now, was there anyone else present when Mr. Gonick made that remark other than Mr. Bopp and you?

A. No, there wasn’t, that is right. [158]

Q. You attended a meeting on the afternoon of July 30, 1945? A. Yes, I did.

Q. Was Charles Grube at that meeting?

A. Yes, he was.

Q. Did you join the A F of L, Mr. Zulaica?

A. Yes, I did.

Q. Did you have an A F of L button?

A. I did.

Q. And did you wear it? A. Yes.

Q. Did you wear it at work? A. I did.

Q. And where did you wear it?

A. Right in front of my overalls.

Q. Did you talk to other employees about union matters?

A. Well, it is not that I talked to them. Most of them came to me asking me questions, and I gave

(Testimony of Albert Zulaica.)

them my idea of what I thought would be the right thing to do.

Q. And what was that idea?

A. Well, I thought that it would be a good thing to pull away from the CIO.

Q. And you expressed that opinion to other employees? A. Yes, I did.

Q. Now, did you work the month of August, from August 3 on? [159]

A. Yes, I did, I work all the month of August.

Q. Did you work the month of June 1945?

A. Yes, I did.

Q. Did you work the month of July 1945?

A. I did.

Q. Now, during the month of June did you see any ILWU representatives in the plant?

A. Very seldom.

Mr. Edises: Now, just a moment.

Mr. Hecht: Incompetent, irrelevant, and immaterial.

Mr. Edises: I object to that.

Trial Examiner Ruckel: During the month of June?

Mr. Royster: Yes.

Trial Examiner Ruckel: Did he see——

Mr. Royster: ILWU representatives in the plant?

Trial Examiner Ruckel: I suppose this is preliminary.

Mr. Edises: It is immaterial to the issues of the case.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: Is it preliminary?

Mr. Royster: It is preliminary.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Royster): During the month of July 1945 did you see ILWU representatives in the plant?

A. Very seldom.

Q. During the month of August 1945 did you see them in the [160] plant?

A. Quite often.

Q. Can you name those that you saw?

A. Well, the first day——

Q. I am not speaking particularly about specific dates at the moment, but if you will name those you saw during that month.

A. Well, I saw the President, Lynden, and Lynch and Gonick, Duarte, and Mr.—I don't know how to say that name—Gleichman. I don't know how——

Q. Gleichman. And how frequently did you see these representatives?

A. Well, they were there most every day in the month of August.

Mr. Hecht: Pardon me. Just a moment, Mr. Royster.

Do you intend to tie this conversation up of Ed Bopp and Duarte with Mr. Zulaica so as to bring it home to the company, or is that going to remain as it is?

Mr. Royster: No more of that at present.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What is the purpose of this testimony?

Mr. Royster: The purpose of the testimony is to show the—are you speaking now of the conversation with Bopp and——

Trial Examiner Ruckel: No, the fact there were representatives [161] there in August which were not there in July and June.

Mr. Royster: I am going to show that the ILWU conducted a campaign in the respondent's plant during the month of August, that it appears to be a campaign I think will be apparent from the fact that they were there almost daily during the month of August, while in June and July they were not. The contrast will come when I will show that A.F. of L. representatives were not permitted to go through the plant as the ILWU representatives were. I think it is pertinent for that purpose and in support of one of the allegations in the complaint.

Trial Examiner Ruckel: Go ahead.

Mr. Hecht: Mr. Examiner, may I reserve a motion to strike the first part of the testimony referring to the conversation had between Mr. Zulaica and Mr. Ed Bopp and Mr. Duarte inasmuch as there is nothing there concerning the respondent, Mr. Bopp not being any kind of an executive officer of the respondent, or in any way connected with respondent other than as an employee of the company.

Trial Examiner Ruckel: Well, it is obvious that

(Testimony of Albert Zulaica.)

those statements, without being tied up with other evidence, do not bind the respondent.

Mr. Royster: It is all part of the same pattern, however, Mr. Examiner. It happens to be a specific instance of [162] campaigning.

Mr. Edises: I submit he has not shown any campaigning on the part of those people at all. So far as the record shows those people were there, as they had the right to be under the contract which made them bargaining representatives for the employees.

Trial Examiner Ruckel: Mr. Hecht is referring, and so was I, to the statements made by the Stewards with respect to attendance at a meeting, wasn't it?

Mr. Hecht: Yes. In other words, the respondent is not being charged with deterring Mr. Zulaica from attending the meetings, so it has no bearing of materiality here.

Mr. Royster: I don't agree it has no bearing of materiality, but I will agree we don't expect by that testimony to show the respondent discouraged the employees from attending this meeting.

Mr. Hecht: In other words, it is part of your pattern of campaigning, Mr. Royster?

Mr. Royster: Yes, sir.

Mr. Hecht: And for that purpose only?

Mr. Royster: Yes, sir.

Mr. Hecht: Then I withdraw my motion, Mr. Examiner.

Q. (By Mr. Royster): Now, you have named

(Testimony of Albert Zulaica.)

ILWU representatives who appeared at the plant almost daily during the month of August. [163]

A. Yes.

Q. Now, what were they doing in the plant, if you know?

A. Well, I didn't see them do anything. When I happened to see them they were just walking around.

Q. Just walking through the plant?

A. That is right.

Q. Now, do you know Charles Leacock?

A. Yes, I do.

Q. And you have testified that you know Hack Gleichman? A. That is right.

Q. Who is Charles Leacock?

A. Well, he is another Steward at the plant.

Q. Did you have a conversation with Leacock and Gleichman on August 11, 1945?

A. Yes, I did.

Q. Now, where did this conversation take place?

A. Right there in the Toilet Department.

Q. And do you recall what time of day it was?

A. I can't be exact, but it must have been about between 4:30 and 5:00 in the afternoon.

Q. Was there anyone present other than Leacock, Gleichman, and yourself?

A. Well, not close by, but the whole unit—by that I mean there were three machines that were running at the time, that is the unit that I am in charge of—and they all saw [164] them talk to me.

(Testimony of Albert Zulaica.)

Q. Who is the foreman in that department?

A. Mr. Mason.

Q. And was Mr. Mason present?

A. No, he was not.

Q. And was Mr. Stanberry present?

A. No, he was not.

Q. What was the conversation?

A. Well, Leacock was the one that came to me first, and he says to me——

Mr. Edises: Excuse me. I am a little bit late with an objection, but the foundation laid so far shows no representative of the respondent to have been present, and I take it that any conversation that may have gone on between Union representatives or between subordinates could have no possible bearing on any of the issues in the case. How could it possibly be attributable to the respondent or bind the respondent?

Mr. Royster: Well, now, Mr. Examiner, if the testimony which this witness is about to give relates solely to matters of campaigning, even then I contend that it is admissible under the issues as drawn here.

Mr. Hecht: I would say this to you, Mr. Royster, that I would be perfectly willing to stipulate that both sides campaigned and distributed pamphlets. [165]

Mr. Royster: But if it should develop that the conversation which the witness is about to relate was brought to the attention of management, then it is admissible for another purpose, and so I ask

(Testimony of Albert Zulaica.)

that I be permitted to continue with my examination along this line.

Trial Examiner Ruckel: You may continue. I will entertain a motion to strike.

Mr. Hecht: All right.

Q. (By Mr. Royster): Now, what was the conversation, Mr. Zulaica?

A. Leacock was the one that came to me first, and these are the exact words that he said, I will never forget them: He said, "I have absolute proof that you have been intimidating people and passing out leaflets," he said. And my answer to that was——

Mr. Edises: What was that? I can't hear you.

The Witness: He said to me that he had absolute proof that I was intimidating people and passing out leaflets, and my answer was that he was crazy, that I had the proof that he was out of his mind, that I could prove that right then and there. And then he says, "Well,—" he says, "this is not the place or the time to present the proof that I have against you," he says, "but the time will come."

And at that time Mr. Gleichman—I can't say that name to save my soul—Gleichman, then he came, and [166] Leacock pointed to me, he says, "This is the man." Then Mr. Gleichman started with—he says, "These are very serious charges against a fellow in your position," he says, "because you have been with the company for how long, did you say?"

(Testimony of Albert Zulaica.)

I said, "17 years." I have been there a little over 17 years, but I said "17."

He said, "Well, there you are." He says, "You have nothing to gain and everything to lose by listening to an A.F. of L. man who has nothing to offer you, only promises that he cannot fulfill," and he says, "On the other hand, you have what the CIO has given you," he says, "more money, better working conditions, and the protection of a strong International."

Then he says, "I think you fellows have been misled by Sherman, Marshall, and Thompson," he says, "Now, take Thompson, for instance," he says, "do you remember that meeting that you had on July 30?" He says, "When he made that long speech." I said, "Yes." He says, "Well, do you know what he did?" I said, "No. What did he do?" He says, "Well, right after he spoke he went into the smoking room and as soon as he walked in there he says, 'How did I sound, boys? Pretty good, huh?' "

He says, "That is not the kind of man that you want." He says, "You want men that will fight for you, not boast that they can talk." [167]

Then he says——

Trial Examiner Ruckel (interposing): Can't we cut this short?

Mr. Royster: This is the whole conversation, Mr. Examiner. I think that it all should go in.

Mr. Edises: Mr. Examiner, it is certainly very

(Testimony of Albert Zulaica.)

interesting, but it doesn't seem to me to have anything to do with unfair labor practices.

Mr. Royster: Just wait, Mr. Edises.

Mr. Edises: Well, all right, I am ready to wait.

Trial Examiner Ruckel: Can't it be summarized by saying that they continued to——

Mr. Royster (interposing): I think he has about come to the end of it.

Trial Examiner Ruckel: Can't it be summarized by saying that they continued to try to persuade him that the CIO was better than the A.F. of L.? Wouldn't that summarize what he tried to say?

The Witness: Yes, that is what he tried to say.

Do you want me to continue, Mr. Examiner?

Mr. Tobriner: Let him finish. We will be through in just a second.

Trial Examiner Ruckel: If there is something important he said that is a little different in quality, all right. [168] What else did he say?

The Witness: Well, he says, "I think that you fellows have been misled," he says, "because we can throw you people out for wearing those AF of L buttons." I said, "Well, you can't do that." I said, "If you start doing that you will have to throw the majority out because most of them are wearing an AF of L button."

Trial Examiner Ruckel: Most of them what?

The Witness: Most of them were wearing AF of L buttons.

Trial Examiner Ruckel: In the plant?

The Witness: In the plant, yes.

(Testimony of Albert Zulaica.)

Then he says, "We don't have to do that." He says, "We can pick some of you out, throw you out and claim that you were leaders, and that will scare the rest of them." And I said, "Well, we don't scare so very easy as all that." I says, "You will have to throw all of us out before we will ever stop," I said, "because most everyone here is fed up with the CIO."

Then he says to me, "Are you an enemy of the CIO?" and I said, "No, I am not. I praise the CIO, they have a very good policy," I said, "but it is the officers of that local that makes it so hard for us to get along." And then he says, "Then you won't change your mind?" and I said, "No, absolutely not, not until you people at the office do the [169] right thing for us."

And I said, "By the way, I got work to do," and with that I left him.

Mr. Hecht: Mr. Examiner, may I move to strike all of that as not bearing upon the issues of the case?

Mr. Royster: I propose to tie it up, Mr. Hecht, immediately with the respondent.

Trial Examiner Ruckel: Motion denied at the present time.

Mr. Edises: I would like to join that motion.

Q. (By Mr. Royster): Now, did you report this conversation to anyone?

A. I couldn't report that conversation right then because there were no officials of the company pres-

(Testimony of Albert Zulaica.)

ent at the time. They had all gone home. But on Monday morning I reported it to Mr. Mason.

Q. And who is Mr. Mason?

A. He is the foreman of the Toilet Department.

Q. Well, what did you tell Mr. Mason? I don't want you to necessarily give the exact words of what you told him, but what portion of this conversation, if not all of it, did you report to Mr. Mason?

A. Well, what I really wanted to find out at the time was—like I said to Mr. Mason, that I wanted to know if those people had a right to come in the plant any time they felt [170] like it. And I said, "I would like to have you talk to Stanberry, or Altman, and find out what it is all about." That is all I said to Mason.

Q. Well, did you have any further conversation with Mr. Mason?

A. He came to me about two or two and a half hours later, and he told me that he had spoken to Mr. Stanberry and that Stanberry said that the reason we were having so much trouble was because we were wearing AF of L buttons.

Trial Examiner Ruckel: Who is Stanberry?

Mr. Wood: A supervisor.

Mr. Royster: Assistant Superintendent, according to Mr. Wood's testimony.

Q. (By Mr. Royster): Well, did you have any conversation with Mr. Stanberry?

A. Well, just a few words. I think it was in the afternoon.

Q. Of what day?

(Testimony of Albert Zulaica.)

A. That same day, that Monday, August 13.

Q. All right.

A. He was coming from the Seafoam Department, and he was in kind of a hurry, and I asked him if I could have a word with him. And I will say this much for him, he always stopped to listen to anyone that wants to talk to him even if he is in a hurry. So he stopped. Then I told him, I said, [171] "Did Mason talk to you?" He said, "Yes," he says, "and I think all your trouble is because you are wearing those buttons. If you take them off you won't have that trouble, see. You can keep that in your heart and take your buttons off. They could never take that out of your heart if you wanted to go into another union." And he just went by.

Q. All right. Now, were you in Mr. Railey's office on September 1? A. Yes, I was.

Mr. Hecht: May I renew my motion to strike all of that testimony, Mr. Examiner?

Mr. Edises: I would like to join in that motion, Mr. Examiner. The conversation, in the first place none of the alleged threats which were attributed to Mr. Gleichman have in any way been brought home to the company. There is a statement to the effect that "The trouble that you people are in—", referring to the controversy then going on between the CIO and AF of L, "results from the fact that you people are wearing AF of L buttons," but there has been absolutely no contention of any threat, express or implied, on the part of the company. I

(Testimony of Albert Zulaica.)

would like to point out that at that time a petition had been filed by the AF of L Union and there was a pending question of representation.

Mr. Hecht: In addition, may I say, Mr. Examiner, that it was the truth that Gleichman spoke, and it is probably [172] the truth that Gleichman spoke to Mr. Zulaica because he was wearing an AF of L button.

Trial Examiner Ruckel: Well, he said most of those in the plant were wearing AF of L buttons. It may stand.

Mr. Royster: Now, I believe I had posed a question to the witness when the objection came. Suppose I repeat it.

Q. (By Mr. Royster): I had asked the witness if he was in Mr. Railey's office on September 1, and I believe he replied in the affirmative.

Is that correct? A. Yes, sir.

Q. Now, will you tell us what took place, or first tell me who was in Mr. Railey's office besides yourself, as nearly as you can recall?

Mr. Edises: Did he fix the date of that?

Mr. Royster: That was on September 1, 1945.

A. You mean the ones that were supposed to be suspended that day?

Q. (By Mr. Royster): I think it will be sufficient if you will just state the company representatives who were there.

A. Oh, Mr. Railey, Mr. Wood, Mr. Altman, Mr. Carter, and Mr. Stanberry.

(Testimony of Albert Zulaica.)

Q. And there was, as I understand it, a number of other employees there?

A. That is right. There were 18 of us. [173]

Q. Did Mr. Railey say anything at that time?

A. Well, he did say—spoke two or three different times.

Q. And do you recall what he said?

A. Well, one time, I remember something that stuck to my mind, that he said, "You must remember that I didn't want you to join a union in the first place." He says, "Now you have your union, you have to pay the consequences."

Q. Well, what was the occasion for——

Mr. Hecht: Just a moment.

Mr. Royster: Yes.

Mr. Hecht: I move to strike that. Whatever Mr. Railey's opinion was as to what he had not wanted them to do has nothing to do with the present case.

Mr. Royster: I don't know whether it has or not. I think it may be a very significant remark, and it is entitled to the consideration of the Board.

Mr. Hecht: I am making a motion to strike, Mr. Examiner.

Trial Examiner Ruckel: It may stand.

Mr. Royster: What was your ruling, Mr. Examiner?

Trial Examiner Ruckel: I said, "It may stand."

Q. (By Mr. Royster): Now, what occasioned this remark of Mr. Railey's?

Mr. Edises: I object to that.

(Testimony of Albert Zulaica.)

Mr. Royster: All right. I will withdraw it.

Q. (By Mr. Royster): What were you told when you first came [174] into Mr. Railey's office?

A. Well, no one in particular said anything to me.

Q. Well, were you told that you were suspended?

A. Oh, well, the foreman was the one that went up and got me first, told me that I was wanted in Mr. Railey's office, and then when we got downstairs I believe it was Mr. Wood—I don't recall exactly whether it was Mr. Wood or Mr. Railey who read that letter.

Q. Now, just a moment.

A. That was sent by the CIO.

Q. Is this the letter that was read to you, or that is a photostat, of course, but is it?

A. Yes, I have one.

Mr. Royster: I ask that this be admitted in evidence, Mr. Examiner, as Board's Exhibit 10.

Mr. Hecht: No objection, Mr. Examiner.

Trial Examiner Ruckel: Has other counsel seen it? No objection?

Mr. Edises: No objection.

Trial Examiner Ruckel: Board's Exhibit 10 will be received.

(Thereupon the document above referred to was marked Board's Exhibit 10 and received in evidence.)

Q. (By Mr. Royster): Your testimony is, then,

(Testimony of Albert Zulaica.)

that Mr. Wood or Mr. Railey read this letter to you? [175]

A. Yes, sir.

Q. To all the employees assembled?

A. Yes, that is right.

Q. Then Mr. Railey made another remark about which you have testified? A. That is right.

Q. Was there any other conversation in the presence of the company officials which you now recall?

A. Well, most everybody tried to speak at the same time, the officials of the company and the men, the people that were supposed to be suspended, so sometimes you just couldn't make heads or tails of what was going on because somebody was talking to somebody else, like we can say Mr. Railey was answering a question to one and Mr. Altman to another and so forth and so on.

Q. Did you hear Mr. Wood make any statement at this meeting?

A. Yes, he did. He made a statement saying—I don't recall the exact words, but he said something like, "If you had kept this about the A. F. of L. quiet this wouldn't have happened to you, see," I think. Well, it was words different, but I just can't recall the words, though.

Mr. Hecht: I move that that go out. It is too insubstantial in the witness' own mind to have the Respondent bound by that.

Mr. Royster: The witness has no doubt in his mind [176] about what was said. He was in doubt as

(Testimony of Albert Zulaica.)

to the exact words, but he summarized the sense of it. I certainly oppose your motion.

Trial Examiner Ruckel: It may stand.

Mr. Royster: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I would like to move to strike the witness' testimony with regard to various conversations that he has related on the ground in the first place that they did not show any conduct on the part of the Respondent which could be deemed an unfair labor practice. It is quite apparent that none of these statements were in any way construable as threats or intimidation. It is quite obvious from the content of the conversation that they all had reference to the demand by the CIO that these people be dismissed, and the Company's view that under the closed shop contract they were required to honor that request, and consequently they cannot be advanced by the Board as evidence in support of any alleged 8(1) which implies an attempt to coerce or to intimidate rather than to, as here, follow the terms of what is conceded to be a valid and existing contract.

For that reason, I move to strike all of the testimony of this witness as to conversations with various persons.

Mr. Hecht: And, Mr. Examiner, in particular I would like to have stricken as no part of the issues in this case [177] the conversation between Gleichman, Duarte, Bopp, and Mr. Zulaica, the witness now on the stand.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What do you have to say, Mr. Royster?

Mr. Royster: Well, Mr. Examiner, everything that this witness testified to is in support of some one of the portions of the complaint. His conversation with Bopp and Gleichman on July 30 showing determination on the part of the ILWU to impose some sort of penalty on employees who attended this meeting. His conversation with Gleichman and Leacock on August 11 shows in the mildest sense of a conversation they were campaigning. Other evidence yet to come will show that the A. F. of L. was not permitted to so campaign. Again, there were threats against this man's **job security by the** ILWU. The report was made to the company of the campaigning that was being conducted.

Mr. Hecht: No report of the campaign had been made, Mr. Royster, a report of a conversation——

Mr. Royster: The evidence is in, I suppose, and speaks very clearly.

Mr. Hecht: You characterized it as a campaign; it was a conversation. There was a report of one conversation.

Mr. Royster: It was a conversation. A conversation can be construed however the reader wants to construe it.

Mr. Hecht: Refresh my recollection. What was that [178] conversation?

Mr. Royster: On August 13, Stanberry, the Assistant Superintendent, told the witness that his dif-

(Testimony of Albert Zulaica.)

difficulty was occasioned by wearing the A. F. of L. button, he could keep it in his heart but not to wear it out on his coat. Pretty much the same thing was told him by his foreman, Mason. Now, we come to September 1. The man is advised that he has been laid off. Mr. Railey makes a remark, "I didn't want you to have a union in the first place; now that you have got it you can take the consequences."

Mr. Edises: That was not quite it.

Mr. Royster: That is my recollection of the witness' testimony.

Mr. Hecht: No, he said, "I didn't want you to have a union in the first place," that is as I recall.

Mr. Royster: "Now that you have got it you can take the consequences."

Mr. Edises: He didn't say, "you can take the consequences." "These are the consequences," or something like that.

Mr. Royster: Mr. Wood said, "If you had not"—well, my memory doesn't run with sufficient clarity to just what Mr. Wood said. I will have to have my memory refreshed from the transcript, what Mr. Wood is alleged to have said on this occasion. [179]

Mr. Edises: He said, according to my notes, "If you had kept this A. F. of L. move quiet——"

Mr. Royster: Yes.

Mr. Edises: Apparently he said, "Not coming out openly this wouldn't have happened to you."

Mr. Tobriner: "You would not have had this trouble."

Mr. Royster: I think that is very significant.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What is the significance?

Mr. Royster: The significance is this: that at the time when the Company is putting into effect a request of the ILWU to discharge these employees it shows almost beyond conjecture, to my way of viewing the evidence, that the Company knew the reason these men were being laid off was because of their A. F. of L. activity. Now, there may be another inference to be drawn there, but my mind is not of sufficient fertility to see what it is.

Mr. Edises: Mr. Examiner, I would like to say that everything that has been said or attributed to the Company representatives is perfectly consistent with the theory of the case that we frankly admit. We admit that everything that happened here was pursuant to the contractual relations between the Company and the ILWU. We make no denial of that. The ILWU tells the employees, "You are not in good standing under the contract."

Don't forget that there was a petition for [180] certification filed at this particular time, that was part of the representation conflict going on between the parties. The Company informs the employees that their suspension is the result of the fact that there is a closed shop contract in effect. The various remarks of the Company representatives, far from showing any desire to penalize these people, actually to my mind shows a desire to protect them. It in effect says, "We don't want to do this. We are doing it is a result of our contractual obliga-

(Testimony of Albert Zulaica.)

tion, and we regret the necessity. If this move of yours had not come out openly, perhaps this would not have taken place.”

Now, all that is on the basis of the accuracy of this witness’ testimony.

Trial Examiner Ruckel: Yes. Well, that is what we are discussing.

Mr. Edises: But it seems to me that everything that has been said here goes to the legal question in the case rather than to any 8(1). In other words, was the contract a valid contract, and were the actions taken pursuant to it, or were they not?

Mr. Royster: It is not the question in the case, Mr. Edises, whether or not this contract is valid.

Trial Examiner Ruckel: Let me say that this, while it was offered originally as 8(1), this evidence doesn’t impress me particularly as constituting interference or [181] coercion on the part of the respondent. It seems to me that the more important effect of the evidence is—impinges on the factor of knowledge of the Company as to the reasons for these employees being in bad, so to speak, with the contracting union as evidence of the Company’s motive or state of mind at the time it separated them from the payroll. That was the point that counsel for the Board emphasized, and that is the point that I am interested in. I am interested in the standpoint of Company knowledge of what was going on. Now, it is true that there is a contract, but the whole theory of the Board’s case, I think, is that irrespective of a contract any em-

(Testimony of Albert Zulaica.)

ployee at any time has the right to join, has the right to agitate for any other labor organization, that if that were not the case that there would never be a change in a bargaining representative, just as in the national picture there would never be a change in administration if one were not free to propagandize for some other party or for some other labor organization. That doesn't mean that they are not obligated to maintain their membership in the labor organization which has the contract. It only means that they are privileged to express their support of some other labor organization at the same time.

Now, the respondent comes in, if he separates the man from the payroll because he has failed to maintain his dues, or failed to maintain his good standing, we will say, that, [182] as I understand the cases, is all right, but while he doesn't know, or shouldn't, isn't in possession of knowledge which would lead him to know the reason why he was not in good standing was that he was advocating some other labor organization, or had voted adversely to the contracting union in the previous election, which sometimes happens. The theory of the Board's cases, I think, is that if there is an election in the plant and a certain union, the CIO is elected, then the CIO cannot go around and under the guise of a closed shop contract expel from work in the plant employees who had voted for the A. F. of L. at that election. It is true enough the CIO becomes a representative of all of the employees no matter how

(Testimony of Albert Zulaica.)

they voted so long as they are in the unit, and those employees, if there is a closed shop contract, have to maintain their membership in good standing in the CIO, but that is not to say that the CIO can go around and expel employees who voted against it at the election, or took some other activity on behalf of the A. F. of L. at some future time.

Mr. Edises: Well, Mr. Examiner——

Trial Examiner Ruckel (Interposing): Now, the question is: What did the Respondent come to know? If it believed at the time that it separated these men that they had failed to maintain their membership in good standing, but didn't know the reason for it, that is one thing. But if the [183] Company knew the reason why they were no longer deemed to be in good standing was that they had voiced support of some other labor organization, then that is something else, and that would be the Board's case.

Mr. Edises: Well, I would like——

Trial Examiner Ruckel (Interposing): Now, this testimony from the Board's point of view bears on that situation, that is, they say the statement of Mr. Wood and others indicate that they knew that the reason why these employees were in bad was that they were advocating some other labor organization, and not that they were in bad standing because of some——

Mr. Hecht (Interposing): Mr. Examiner, may I renew the motion on other grounds? From your statement now I gather there was certain admin-

(Testimony of Albert Zulaica.)

istration made by the Board, the National Labor Relations Board which is a direct test upon this contract to which this Respondent is bound. In other words, because of some knowledge the respondent here is asked to violate legal rights and not to perform obligations of their contract.

I submit that if this is the case the CIO should be on trial here, or in some other tribunal, not this Respondent.

So I move to strike, because all of this proceeding is directly an attack on this contract.

Trial Examiner Ruckel: We discussed that yesterday. [184]

Mr. Hecht: Yes, but I want to lay down that legal ground for the purpose of the record.

Trial Examiner Ruckel: Motion denied. And so far as the motion on this witness' testimony is concerned, that is denied also.

I think counsel should bear in mind with future witnesses (and let's save time as much as possible) that the testimony of this type, it seems to me, is important only if it makes a connection with the respondent's knowledge, unless it is pretty clearly 8(1) of a more garden variety.

Mr. Hecht: May I say also, Mr. Examiner, as far as I know, that the parties are always required to exercise their legal rights regardless of their—

Mr. Edises: Mr. Examiner, I would like to ask for a point of clarification.

Do I understand the Examiner's position as to the law to mean that if an employee engages in union

(Testimony of Albert Zulaica.)

activity on behalf of a rival organization that that clothes him with an immunity from any discipline by the contracting organization for any cause whatever? For example, suppose the fact should be that this man did engage in pro-A. F. of L. activity, and that the most salient and significant form of that activity was engaging in an illegal wartime strike in violation of the pledge of the ILWU, do I understand the Examiner's position to be that union activity of that kind [185] would put the man beyond the possibility of disciplinary action by the contracting union?

Trial Examiner Ruckel: I said nothing of the kind. I say from what you say the reasons for the discharge may have been that he engaged in an activity which the contracting union has specifically decided not to tolerate during the time of the war, that is not activity on behalf of some other labor organization. My remarks to the privilege of the employer, as the privilege of a citizen outside the union, is to engage in politics, if you will, so long as he maintains his membership in the contracting union. I said nothing about any intra-union activity which was not support of some other labor organization.

Mr. Edises: Now, my question was assuming that this activity of engaging in this strike was a form of activity in behalf of the formation of another labor organization. The facts in this case will show that that is true, that it was all part and parcel of this anti-CIO campaign, but the facts will

(Testimony of Albert Zulaica.)

also show that the aspect of it which the CIO regarded as culpable was not their interest in another organization but their engaging in this illegal war-time strike. And the question I am asking is whether your position as stated would indicate that that kind of activity was clothed with the protection of the Act?

Trial Examiner Ruckel: There is nothing in what I [186] said which would preclude evidence on that point. Then the question becomes more difficult, probably, but it amounts to the same thing because you are saying that the reason was not for their suspension, activity in behalf of some other organization, which led to their suspension, but the calling of a strike which the union had guaranteed would not be permitted. It is a question of fact, which was the motive on the part of the CIO, or which was the motive on the part of the CIO which came to the attention of the respondent.

Mr. Hecht: May I ask the Examiner also a point here for clarification? The Board's position, then, as a matter of law, is that if the Employer knows that the contracting union has a bad motive, let us put it that way, it may not perform the contract——

Trial Examiner Ruckel (Interposing): That has been the effect of our cases. I cited one yesterday where the bad motive was something else, where the purported motive was his failure to maintain dues. That knowledge was right on the table in front of the Employer. He knew by simply adding two and two together that the Union's claim was

(Testimony of Albert Zulaica.)

false, and that, therefore, the other reason must have been the one that activated it. But I said the Board has never held there was any obligation to the Company to go behind the scenes to find out or to investigate. Where he has it thrown up in his face, so that he knows that the Union is disciplining [187] a man for something else, then——

Mr. Hecht (Interposing): Going further, then, Mr. Examiner, the Board's position is that a contract then becomes invalid.

Trial Examiner Ruckel: That is not my position at all. It has never been the Board's position that I know of.

Mr. Hecht: If that is not the Board's position then how can the Employer refuse to honor the contract?

Trial Examiner Ruckel: Well, let's not discuss this any further. I think I have indicated that I think this testimony is material, which was moved to strike on the point of company knowledge, although I was not impressed by it from the standpoint of hostility toward either of the labor organizations.

Are there any further questions of this witness?

Mr. Hecht: Yes, sir, Mr. Examiner.

Cross-Examination

By Mr. Hecht:

Q. Mr. Zulaica, were you at the Green Room,

(Testimony of Albert Zulaica.)

158 Grand Avenue, Oakland, California, on December 17, 1945, at or about 8:30 P.M.?

A. Yes, I was.

Q. What is the Green Room?

Mr. Royster: I would like to ask counsel what line of examination this is.

Mr. Hecht: It is preliminary like some of your questions, [188] Mr. Royster.

Mr. Tobriner: I would also like to object. It was not covered in direct examination and, therefore, is not subject to cross.

Mr. Hecht: It is impeachment.

Trial Examiner Ruckel: You may answer.

Q. (By Mr. Hecht): What is the Green Room at that address, Mr. Zulaica?

A. Well, I can't explain; I really don't know what the Green Room is. I know it is a room, and that is all I can tell you about it.

Q. What were you doing in there?

A. What was the question?

Q. What were you doing there?

A. We went up there for a trial.

Q. You were being tried by the ILWU?

A. That is right.

Q. And during the proceedings of your trial you pleaded guilty, did you not?

A. We were practically forced to.

Q. Answer the question and you can explain later.

A. Well, that is the answer.

(Testimony of Albert Zulaica.)

Q. "Yes," is it? A. "Yes," of course.

Q. And now you are on probation—— [189]

Mr. Tobriner: Just a minute! He has a right to explain that, counsel.

Go ahead.

Mr. Hecht: We are not bound by the direct or cross. We weren't there, Mr. Examiner.

Trial Examiner Ruckel: That is correct. I still think he may qualify his answer if there is a qualification to be made.

Did you want to say something further?

The Witness: As to the Green Room?

Trial Examiner Ruckel: No, not the Green Room. You indicated although you plead guilty you didn't mean to, or want to.

The Witness: That is right.

Trial Examiner Ruckel: Finish your sentence.

The Witness: Because it was a very unfair thing, it was a very unfair trial.

Trial Examiner Ruckel: All right. We didn't want to know why it was unfair. That was your qualification of your answer.

The Witness: That is right.

Trial Examiner Ruckel: Continue.

Q. (By Mr. Hecht): And you pleaded guilty to violating the anti-strike pledge of the ILWU, did you not, Mr. Zulaica? A. Yes, I did. [190]

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Mr. Edises: I want to ask him a couple of questions.

(Testimony of Albert Zulaica.)

Q. (By Mr. Edises): Mr. Zulaica, you testified that you saw no CIO representatives in the plant in June or July. I would like to ask you: the employees of Colgate-Palmolive-Peet were members of the CIO at that time, were they not?

A. That is right.

Q. And you had certain officers, did you not, who conducted the grievances and handled the other activities on behalf of the employees, did you not?

A. Yes, sir.

Q. And who were those persons?

A. You mean the Stewards at the time?

Q. You had Shop Stewards, did you not?

A. Stewards, that is right.

Q. And they were the CIO representatives in the plant, were they not? A. Yes.

Q. And during the month of August, at that time the Stewards had been suspended, had they not? A. That is right.

Q. And there were other persons appointed in their place, were there not? A. Yes. [191]

Q. And the affairs at that time—Union affairs—were largely conducted by officials of the ILWU during that period, were they not?

A. Yes, sir.

Q. Did you during the month of August engage in activities on behalf of the A. F. of L. among your fellow employees?

A. Well, I don't know whether you would call it that. See, like I stated before, I didn't ask anybody. They came to me.

(Testimony of Albert Zulaica.)

Q. Uh-huh. A. And that is my opinion.

Q. That the employees came to you?

A. Yes.

Q. On the job? A. That is right.

Q. And did quite a number——

A. (Interposing): It so happens that my job gives me—well, I can say the freedom of walking around the department, see.

Q. Yes.

A. And whenever I pass anybody they would call me and ask me my opinion.

Q. And was there anything secret about that, or did you do it frankly and openly?

A. I did it openly, yes.

Q. You did it openly throughout the period that we are [192] speaking of, is that right?

A. That is right.

Q. And did you, in your testimony, intend to convey the inference that Mr. Stanberry was threatening you in some way?

A. Well, I don't know just how to take that.

Q. I mean, did you gather, was his attitude such as to lead you to believe that he was threatening you?

Mr. Royster: I will object to that. The Witness has testified as to what Mr. Stanberry said, and I believe if there is any threat, why, it must be implied from those words.

Mr. Edises: I submit that is a strange doctrine, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

(Testimony of Albert Zulaica.)

The Witness: Well, I don't know how to answer that because he didn't—it sounded like he was threatening, but at the same time the way he said it, why, it could have been put that way, you know, saying that he might have been threatening because he said, "Well, you can keep it quiet," or "keep it in your heart; take the button off."

Q. (By Mr. Edises): Well, was it your understanding, Mr. Zulaica, that Mr. Stanberry himself was—well, I will withdraw that.

Did you understand that Mr. Stanberry was referring to [193] what the Company felt it had to do under the contract?

Mr. Tobriner: Objection on the ground that the understanding of this witness on the subtle question which is asked would be immaterial.

Mr. Edises: Well, Mr. Examiner—

Trial Examiner Ruckel (Interposing): Objection sustained.

Mr. Edises: I would like to point out that here we have statements which, in the very nature of things, have got to be interpreted.

Trial Examiner Ruckel: Well, I think it is up to the Board to interpret it, though. The Board will bear in mind that might have been an explanation of the statement.

Q. (By Mr. Edises): Was the contract with the Union, the closed shop contract, Mr. Zulaica, was that mentioned to you, was that set forth as the

(Testimony of Albert Zulaica.)

reason for the Company's action when you were told that you had to be released?

Mr. Tobriner: Objection on the ground the question is compound, first asking whether it was a closed shop contract, and secondly, the various other questions interrelated so the witness couldn't answer it. I ask counsel to please reframe it.

Trial Examiner Ruckel: Reframe it.

Mr. Edises: Well, I will reframe it.

Q. (By Mr. Edises): Referring to the conversation in Mr. [194] Railey's office on September 1, 1945, do you recall that you testified about that?

A. Yes.

Q. Was anything said about the Union contract at that time? A. I don't recall.

Q. You don't recall? A. No.

Q. Didn't anybody ask why they were being released or suspended? A. Yes.

Q. Who asked?

A. Oh, I couldn't mention the names?

Q. Did you hear any answers?

A. I don't remember who was the one that answered.

Q. Was it one of the Company's officers?

A. Yes.

Q. And what was the answer?

A. Now, let's see. Repeat that question again. Then maybe I can answer it.

Trial Examiner Ruckel: What did he say?

The Witness: I believe it was Mr. Railey, the one that answered that.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What did he say?

The Witness: He said that he didn't know. He says, [195] "All you have to do is just look at this letter," and he showed it to us. He says, "All it says there that you are not in good standing."

Q. (By Mr. Edises): He showed you the letter?

A. That is right.

Trial Examiner Ruckel: Referring to Board's Exhibit 10.

Mr. Edises: Yes.

Q. (By Mr. Edises): Did you participate in the stoppage of work that occurred on August 1, 2, and 3, 1945?

A. Well, I didn't work those two and a half days, if that is what you mean?

Q. You did not? A. I did not.

Q. You didn't work for two and a half days?

A. That is right.

Q. You stayed away from work for two and a half days? A. That is right.

Q. You were familiar, were you not, with the ILWU's no-strike pledge? A. Yes, sir.

Mr. Edises: That is all.

Mr. Hecht: Mr. Examiner, at this point I would like to move to dismiss any charges against the Respondent brought on behalf of Mr. Albert Zulaica.

Mr. Tobriner: I have a few questions, I think, that [196] should——

Trial Examiner Ruckel (interposing): Let's finish the testimony.

(Testimony of Albert Zulaica.)

Do you have some further questions?

Mr. Tobriner: I have one or two questions.

Redirect Examination

By Mr. Tobriner:

Q. Mr. Zulaica, you mentioned that you were at a trial on December 17th?

A. That is right.

Q. Before that time had you any conversations with CIO officials about that?

Mr. Hecht: I object to that as being incompetent, irrelevant, and immaterial. The fact that he pleaded guilty—we were not there. Any such testimony is not binding upon us.

Mr. Tobriner: Well, Mr. Hecht himself brought up this situation.

Mr. Hecht: I just asked him for the facts.

Mr. Tobriner: And asked for the facts, and I think we have a right to go into them to show the nature of the plea, if any, that was made, and why it was made, so long as the matter is in the record.

Trial Examiner Ruckel: We are not interested in why the plea was made. All we are interested in—unless you can show that the Respondent knew why the plea was made. [197]

Mr. Tobriner: What was the purpose of Mr. Hecht's examination except, as I understand, to impeach the witness? I now want to show that the impeachment that he attempted failed.

Trial Examiner Ruckel: Well, I didn't understand that it was impeachment of the witness.

(Testimony of Albert Zulaica.)

Mr. Tobriner: That is what he stated at the time, Mr. Examiner.

Mr. Edises: Well, Mr. Examiner, it is quite clear that the purpose of the testimony, the only relevant purpose, can be to establish that the Company based its action in finalizing the status of this employee on the Union's decision following the trial of this employee.

Trial Examiner Ruckel: That is right.

Mr. Edises: Now, I don't know what Mr. Tobriner has in mind, but it is quite obvious that nothing in the question that he has asked could possibly be brought home to the company, or be attributed to the company.

Trial Examiner Ruckel: Well, I don't think the question is relevant unless you intend to show it was brought home to the company.

Mr. Tobriner: Well, Mr. Examiner, if the purpose of the testimony regarding the December 17 meeting was to somehow exonerate the Company for its actions, then I ask it be stricken. At the time the question was asked, if you recall, [198] I objected. and at that time Mr. Hecht said it was to impeach the witness, it was by way of impeachment.

Mr. Hecht: And it is by way of impeachment, Mr. Examiner. After all, the complainant is here charging the Company with unfair labor practices, and before doing so he has stultified himself at a tribunal of his own——

Mr. Tobriner (interposing): Then I have a right——

No. 11514

United States
Circuit Court of Appeals
For the Ninth Circuit.

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent,
and
INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L.,
et al., Intervenor,
and
WAREHOUSE UNION LOCAL 6, INTERNATIONAL
LONGSHOREMEN'S & WAREHOUSEMEN'S UNION
(CIO), Intervenor,
and
NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
COLGATE-PALMOLIVE-PEET COMPANY,
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Transcript of Record

In Three Volumes

Volume II

Pages 337 to 666

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(Testimony of Albert Zulaica.)

Mr. Hecht (interposing): I am entitled to impeach him and he has been impeached.

Mr. Tobriner: Then I have a right by your own statement to show why the plea was made, to show that your impeachment is improper and out of order, and that is exactly the purpose of my question.

Mr. Edises: Mr. Examiner, I want to suggest that if this procedure is allowed to go on it will obviously take this trial into a lot of by-paths, and I submit that the Trial Examiner should rule in this instance that the testimony is relevant for the purpose that I indicated a moment ago, even though it may not technically be impeachment.

Mr. Tobriner: Mr. Examiner, I can ask one question——

Trial Examiner Ruckel (interposing): I thought I permitted the questions a while ago. Now, the objection I am upholding now is the objection which apparently is designed to show—to go behind the proceedings to show that they were fraudulent, or that his plea of guilty was [199] brought about by coercion on the grounds that the Respondent almost certainly could not know that was the case, if it was, and we are concerned here with the Respondent's motive in discharging a man.

Mr. Tobriner: Yes, but the testimony originally went into the record not on that ground but because Mr. Hecht——

Trial Examiner Ruckel (interposing): Well, I am paying no attention to it on the grounds of

(Testimony of Albert Zulaica.)

impeaching witnesses, whether it was offered for that purpose or not, and I sustain this objection.

Mr. Tobriner: I have no further questions.

Mr. Royster: That is all.

Mr. Hecht: Will the Examiner entertain at this time a motion to dismiss all charges against the Respondent brought on behalf of the complainant, Albert Zulaica?

Trial Examiner Ruckel: No, not at this time. I will entertain that motion at a later time, with respect to all of this.

Mr. Hecht: Very well, Mr. Examiner.

Trial Examiner Ruckel: That is all.

Mr. Royster: That is all.

(Witness excused.)

Trial Examiner Ruckel: We will recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Call the next witness.

Mr. Royster: Mr. Lonnberg.

HAROLD R. LONNBERG

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address for the record, please.

(Testimony of Harold R. Lonnberg.)

A. Harold R. Lonnberg, 1245 60th Avenue, Oakland.

Q. What is your occupation, Mr. Lonnberg?

A. At the present time I am working as a roll operator in a steel plant, Steel Tank and Pipe in Berkeley.

Q. And you were employed by the Respondent for what period?

A. I was first employed on June 29 in 1938.

Q. And when did you leave that employment?

A. On July 31 I was suspended.

Q. Of what year? A. Of 1945.

Q. And you were a member of the ILWU, were you not? A. I was.

Q. For what period?

A. From the time that the Local Industrial Union 96, CIO, was transferred into the Warehouse Union.

Q. Up until when? [201]

A. Up until my suspension.

Q. And that occurred when?

A. On July 31, if I recall right.

Q. 1945? A. 1945.

Q. Now, you attended this meeting of Respondent's employees to which reference has been made on July 26, did you not, Mr. Lonnberg?

A. I did.

Q. And it was at that meeting that—strike that.

Was there a statement made at that meeting as to the purpose of the Employees Welfare Association? A. Yes.

(Testimony of Harold R. Lonnberg.)

Trial Examiner Ruckel: I thought we had agreed off the record yesterday——

Mr. Royster (interposing): We had talked about it off the record, Mr. Examiner. I think that I can agree that after this witness I will ask no other witness any questions with respect to that point, but I am not completely satisfied with the state of the record on it yet.

Trial Examiner Ruckel: All right, continue.

Q. (By Mr. Royster): Will you state, or can you state, what the purpose of the Welfare Association was?

A. The title of it may seem misleading, but it was to take care of the negotiations and relations, labor relations, [202] of the employees with the Employer.

Q. Now, Mr. Lonnberg, at the meeting of the Welfare Association on July 30 you, among three others, were selected to meet with the Company, were you not? A. That is right.

Q. Now, on July 30 did you see Board's Exhibit 4 (handing document)?

A. (Examining document) It was brought to my attention.

Q. Where did you see it?

A. It was shown to me by one of the other fellows at the plant.

Q. All right. On July 31, you, with three others who have been named, went to Mr. Railey's office?

A. That is right.

Q. Was anything said in Mr. Railey's office and

(Testimony of Harold R. Lonnberg.)

in Mr. Railey's presence with respect to your suspension?

A. Yes. Mr. Heide informed the four of us that there were letters made out stating the reasons that we were to be suspended, that were in the mail to us, and that one of them, he did not know their name, so he had to fill in the name on that one. The letter was already made out and it would be put in the mail. That was Brother Olsen.

Q. Now, when was this statement made to you with reference to the so-called strike, which, I understand, occurred at noon of July 31? [203]

A. The meeting occurred and was concluded before any such action was taken.

Mr. Hecht: What meeting was that, may I ask, Mr. Royster?

Mr. Royster: This is the meeting in Mr. Railey's office. It is part of our stipulation.

Mr. Hecht: Yes.

Mr. Royster: Where the four committeemen came in.

Mr. Hecht: Yes, thank you.

Q. (By Mr. Royster): Have you worked, then, for the Company since the 31st day of July?

A. The 31st day of July? No.

Q. And have you made an attempt to be reinstated? A. Yes.

Q. And when was that?

A. On or about the 17th of August.

(Testimony of Harold R. Lonnberg.)

Q. And you were refused reinstatement at that time, were you not? A. That is right.

Q. Were you in Respondent's plant on August 25, 1945?

A. On or about that date, yes.

Q. And who accompanied you, if anyone?

A. Mr. Harvey E. Howard and Mr. Dave Luchsinger.

Q. And who was Mr. Howard?

A. At that time he was the representative of the A. F. of L. [204] Local Chemical Workers 233.

Q. You were a member of the Chemical Workers, were you? A. I was.

Q. What happened during the time you were in the plant?

A. We went through various departments in the plant and said, "Hello" to the people. We run across Mr. Gleichman in the Seafoam Department, who was talking to one of the employees.

Q. Is that Hack Gleichman seated at the counsel table?

A. Gleichman, whatever his name is, yes.

Q. Did you have any conversation with any company representatives on that occasion?

A. We went through some more departments, and when we were in the Toilet Article Warehouse talking to some of the people there, Mr. Carter, the Supervisor, came there.

Q. And what did Mr. Carter say?

A. He said, "I will have to ask you to leave this plant." And I asked Mr. Carter, "Why?" He

(Testimony of Harold R. Lonnberg.)

said, "You are not any longer an employee here, and—" he says, "you have no business here."

I asked Mr. Carter why Mr. Gleichman and a Mr. Carlisle Harrison were permitted in the plant and we were not. He said, "They are representatives of the CIO Longshoremen's and Warehousemen's Union." I told him that to my knowledge Mr. Carlisle Harrison was not an elected representative, to [205] my knowledge, that he was only a former employee the same as myself, and that I thought that Mr. Harrison and Mr. Gleichman should be asked to leave if we were.

Q. Did you leave the plant?

A. We did.

Q. What was your purpose in visiting the plant?

Mr. Hecht: At this point may I make a motion to strike all the testimony with reference to August 25 and the visit of this gentleman to the plant?

Trial Examiner Ruckel: The motion is denied.

Q. (By Mr. Royster): What was your purpose in visiting the plant, Mr. Lonnberg?

A. Mr. Luchsinger and myself and Mr. Howard were in the Local's office at 1440 Broadway, when we were called up from the plant and informed that these two aforementioned gentlemen were there. We tried to contact the management of the plant, Mr. Railey, Mr. Altman, or Mr. Wood. We could not contact any of them, so we decided to go down and see what was going on. So consequently we went down to the plant and went all

(Testimony of Harold R. Lonnberg.)

through the plant before we were escorted out of the plant.

Q. Well, you stated you were talking to employees in the plant. What were you talking to them about?

A. Well, we didn't stop to talk to any of them at that——

Mr. Hecht (interposing): Mr. Royster, just a moment, [206] please.

Mr. Hecht: I think what they were talking to the employees about is incompetent, irrelevant, and immaterial.

Mr. Royster: He can testify what he was saying to the employees.

Mr. Hecht: I don't see what bearing it has on the case as far as this Respondent is concerned.

Trial Examiner Ruckel: You may answer.

A. We spoke to the various people that approached us as we went through. We said, "Hello" to them and told them that everything was looking fine as far as we knew, but we did not think it was right that the CIO should be able to campaign on the job and the A. F. of L. not.

Mr. Royster: That is all.

The Witness: And—pardon me.

Mr. Royster: Excuse me. Finish your answer.

The Witness: We did not only talk to employees. There were some of the foreman asked us questions too, and we gave them the same answers.

Q. (By Mr. Royster): Can you recall the names of any of the foremen?

(Testimony of Harold R. Lonnberg.)

A. I would rather not as these men are still working in Colgate-Palmolive-Peet's.

Mr. Royster: That is all.

Mr. Hecht: Mr. Royster, may I call your attention to [207] the complaint.

Mr. Rowell: Well—

Mr. Hecht (interposing): This is preliminary to a motion.

Mr. Rowell: I see.

Mr. Hecht: Paragraph 5, Subdivision 3; I assume that the testimony of Mr. Lonnberg is directed to this subdivision?

Trial Examiner Ruckel: At least it fits in there.

Mr. Royster: Yes.

Mr. Hecht: Yes. Now, Mr. Examiner, it says, "Refusing union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours."

My reference is to the first part of the paragraph. There is no evidence here adduced from Mr. Lonnberg that they were refused access. As I understand the connotation of such language is that they asked for permission to come in and it is refused. It appears here these gentlemen did not ask for permission to enter but were escorted out for reasons which Mr. Carter may have had.

I am going to move to strike, it being at variance with the pleading, and not proving any allegation of the complaint.

Trial Examiner Ruckel: Motion denied.

(Testimony of Harold R. Lonnberg.)

Mr. Rowell: May I ask one or two questions?

Mr. Hecht: I am going to ask some questions.

Mr. Rowell: I want to ask further questions on direct.

Trial Examiner Ruckel: You want to supplement these questions?

Mr. Rowell: I want to supplement the direct.

Q. (By Mr. Rowell): Mr. Lonnberg, at this meeting of July 30 were there any foremen or supervisors of the Company there?

A. Yes, sir.

Q. Who were there that were in that category?

A. Brother Chuck Grube.

Q. Charles Grube? A. Charles Grube.

Mr. Hecht: I move to strike that, Mr. Examiner, as incompetent, irrelevant, and immaterial, as not bearing on the issues of this case. It has been testified Grube was an ILWU member. I don't see what the point is.

Mr. Rowell: Mr. Wood testified he had supervisory capacity, Mr. Examiner.

Mr. Hecht: Well, he was a member of the Union too.

Trial Examiner Ruckel: What is the point if he was a member of the Union?

Mr. Rowell: It just adds to the evidence and the fact that the Company had knowledge of the meeting.

Mr. Hecht: That is not denied. [209]

Mr. Rowell: Well——

(Testimony of Harold R. Lonnberg.)

Trial Examiner Ruckel (interposing): Objection sustained.

Q. (By Mr. Rowell): Did you receive a letter from the Union after this meeting in Mr. Railey's office about which you testified? A. Yes.

Q. Have you got that letter?

A. No; I am sorry. I destroyed it.

Q. Can you remember what it said?

A. It was similar to the letters that were received by the other three men that were in the office at the time I was.

Q. I show you Board's Exhibit 9, Mr. Lonnberg, and ask whether the letter you received was similar to that?

Mr. Edises: Is that 9 for identification?

Mr. Royster: No; it is in evidence.

Q. (By Mr. Rowell) Was there any difference in your letter?

A. (Examining document) The only difference that I see was my name and address.

Q. Did you ever receive any other letter from the Union? A. I did.

Q. When did you receive that?

A. It was approximately two or three weeks after this one.

Q. And have you got that letter? [210]

A. No, I am sorry.

Q. Can you remember what it said?

A. There is one sentence that stands out in that

(Testimony of Harold R. Lonnberg.)

letter distinctly in my mind. It was the last sentence of the first paragraph.

Q. And what did that say?

A. It said that——

Mr. Edises (interposing): Now, just a moment. I want to enter an objection.

There has been no showing of the unavailability of the best evidence, and there is no showing of any accurate recollection of the contents so as to enable him to testify in a secondary way.

Mr. Rowell: He has testified it stood right out in his mind.

Trial Examiner Ruckel: Do you have a copy of that letter?

Mr. Edises: One particular paragraph stands out in his mind. We are not required to be bound by that testimony. We have a right to demand the best evidence, at least in the absence of a showing that it is unavailable.

Trial Examiner Ruckel: Do you have it home or elsewhere?

The Witness: No, I am sorry. I was burning some trash in my yard when I received that letter and I dropped [211] it in the fire.

Mr. Hecht: Mr. Edises, may I suggest that the intervener produce its copy of the letter, if any.

Mr. Edises: Well, I presume——

Trial Examiner Ruckel (interposing): It seems to me there must be copies of the letter or of similar letters.

(Testimony of Harold R. Lonnberg.)

Mr. Edises: If the original is unavailable I daresay the copy would be the best evidence.

Trial Examiner Ruckel: Objection sustained.

Let's have your copy if you have it.

Q. (By Mr. Rowell): What was the date of that?

A. It was two or three weeks after this letter was received.

Mr. Royster: Around the 20th of August.

Mr. Rowell: I think the witness should be permitted to testify subject to a motion to strike.

Mr. Edises: Let's wait and see if we have a copy.

Mr. Rowell: If a copy isn't produced——

Trial Examiner Ruckel (interposing): Any further questions?

Mr. Rowell: Well, they are looking for a copy.

Mr. Hecht: Mr. Examiner, when the letter or the copy of the letter is produced may it be understood that any testimony in connection therewith is not binding on the Respondent unless his knowledge is shown? [212]

Trial Examiner Ruckel: Well, it pretty well stands to reason, it seems to me——

Mr. Rowell: (Interposing) I don't see that at all, Mr. Examiner. This case is directed against the Company in all its phases. The intervening union here is only properly in the case in so far as it offers evidence and testimony on a defense by the company. They are making defenses which have been thoroughly stated, and the purpose of

(Testimony of Harold R. Lonnberg.)

which has been explained, and the defenses are different than the ones that Mr. Hecht is making.

Trial Examiner Ruckel: Are you going to bind the company by a letter from the union to this man of which the company didn't receive a copy? Even if it did receive a copy?

Mr. Rowell: The union's position is that these men were suspended because of strike action, at least some of them. It certainly doesn't apply to Mr. Lonnberg, but that position can only be supported as a company defense. And if the position is being maintained by the Intervener on behalf of the company we are entitled to meet it.

Mr. Hecht: You asked the question, Mr. Rowell. Mr. Edises didn't.

May we have a recess while Mr. Edises looks for that letter?

Trial Examiner Ruckel: We just had one. I hope in a [213] second he will find it.

Mr. Tobriner: Off the record.

Trial Examiner Ruckel: Off the record.

(Remarks off the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: We will object to any questions as to any communications which may have been sent in by the union, one, on the ground that the communication itself would be the best evidence; second, on the ground that it does not prove or tend to prove any of the issues in the case; it is incompetent, irrelevant and immaterial.

(Testimony of Harold R. Lonnberg.)

Mr. Hecht: We join in the objection, Mr. Examiner.

Trial Examiner Ruckel: Well, since you are unable to find the copy of that letter and since he has testified that he destroyed the original, I think he may testify what it says, to the best of his recollection.

Mr. Edises: Well, may this be subject to a motion to strike in the event it is not connected with the company?

Trial Examiner Ruckel: Certainly. I don't know whether it is relevant or not.

Mr. Rowell: Will you answer the question? Can you remember?

A. The sentence that stood out in my mind was the last sentence of the first paragraph.

Q. (By Mr. Rowell): What did that say? [214]

A. It stated that Sherman, Lonnberg and Thompson were considered no longer connected with the Warehouse Union regardless of trial, and it went further to state, further down in the letter, that it was a call for me to appear at a trial in the Warehouse Union's hall.

Mr. Hecht: Now, on behalf of the company, of the respondent, I move to strike it, Mr. Examiner.

Mr. Edises: We join in that motion, your Honor.

Mr. Rowell: I can only repeat that the CIO union has been allowed to go into these matters on some sort of an expectation which, I suppose, is forwarded to them by the company, that it will be tied up later as to the issue of knowledge of the

(Testimony of Harold R. Lonnberg.)

company. I don't know the Board's case. Maybe this will get tied up for all I know. If they are going to produce a lot of testimony as to what the company knew——

Trial Examiner Ruckel: (Interposing) Maybe it will get tied up, but you don't have any present expectation?

Mr. Rowell: Well, I can't have any control over the company's witnesses as the CIO apparently has. I don't know what is going to come out as to the knowledge of the company. Apparently it is more extensive than I thought it was.

Mr. Edises: Mr. Examiner, I want to make a motion to strike. There is a completely uncalled for statement in [215] Mr. Rowell's remarks, that apparently the CIO has control over the company's witnesses.

Now, I submit, Mr. Examiner, that it is perfectly possible to try this case without going into personalities of that kind.

Trial Examiner Ruckel: Well, I should think so. The motion to strike is——

Mr. Tobriner: (Interposing) Mr. Examiner, may I be heard for just a moment? I want to point out if the question is brought up at all as to the suspensions or expulsions and the trials, and if the Company and the CIO are relying upon those actions in a manner of defense here, that it certainly would be unilateral if they were permitted to introduce proof and statements as to the rulings in those trials and we were prevented from so doing. In

(Testimony of Harold R. Lonnberg.)

other words, if the matter is to be probed by one party, and if one party is to be permitted to rely on it on the ground that he has some knowledge that subsequently he obtained as to the reasons for the suspensions, certainly we should be permitted to place into the records the full story of the suspensions so that the Board could have all the facts and make its own determination.

Trial Examiner Ruckel: Well, I don't subscribe to your general statement. I am going to let this particular bit of testimony stand for what it is worth. [216]

Mr. Edises: Will my motion be granted as to Mr. Rowell's uncalled for remarks?

Mr. Rowell: He already granted it, Mr. Edises.

Trial Examiner Ruckel: I said yesterday we should keep them out of the record.

Mr. Rowell: I withdraw the remark.

Trial Examiner Ruckel: Let's continue with this witness. At the rate we are making this morning we will be here endlessly.

Mr. Rowell: I have no further questions.

Cross Examination

By Mr. Hecht:

Q. Mr. Lonnberg, on August 17, 1945, when you applied for reinstatement at the respondent's plant you were not a member in good standing of the ILWU?

A. To my knowledge, I hadn't been tried or found guilty or anything of the kind. I was still, to my knowledge, in good standing with the ILWU

(Testimony of Harold R. Lonnberg.)

in the sense that my dues were within—reasonably paid up.

Mr. Hecht: I move to strike the answer on the ground that it is not responsive, Mr. Examiner.

Mr. Tobriner: Mr. Examiner, it answers the question fully, and the witness should be permitted to tell the whole story, as he has.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Hecht): Perhaps to aid you, Mr. Lonnberg, I [217] will reword my question. You knew at that time that the respondent had been informed by the authorized officers of the ILWU that you were not in good standing with the ILWU?

A. Yes, I was in the meeting there with the other three men when we were told about it.

Q. Mr. Lonnberg, on August 17, 1945, you knew that there existed a collective bargaining agreement between the Respondent and the ILWU dated July 9, 1945?

Mr. Rowell: '41.

Mr. Royster: '41.

Mr. Hecht: '41. Pardon me.

A. Yes, sir.

Q. (By Mr. Hecht): Are you familiar with the terms of that contract?

A. To a certain extent, yes.

Mr. Hecht: May I have Board's Exhibit 7?

(The document was handed to Mr. Hecht.)

Q. (By Mr. Hecht): Will you read Section 3 on page 1 of the contract to yourself, Mr. Lonnberg?

(Testimony of Harold R. Lonnberg.)

Mr. Tobriner: In order that the record be complete, we object to this whole line of questioning on the ground it is immaterial.

Trial Examiner Ruckel: He may ask him.

Q. (By Mr. Hecht): Does your recollection of what is contained in that contract gibe with what is expressed in [218] Section 3?

A. Approximately, yes.

Q. On August 25, 1945, you stated that you entered respondent's plant in the afternoon?

A. On August which?

Q. 25, 1945? A. On or about.

Q. That was a Saturday, was it not?

A. Yes.

Q. Had you at any time prior to August 25 asked permission of any officer or agent of the respondent to enter the plant for the purpose of doing, let us say, electioneering?

A. I hadn't myself, but our union representative had.

Q. Will you name that union representative?

A. Mr. Harvey E. Howard.

Q. Of whom had he made that request?

A. I do not recall.

Q. Is Mr. Harvey Howard, to your knowledge, available to testify in this case?

A. I do not know.

Q. You know Mr. Howard is not any longer in the East Bay, do you not?

A. I don't know whether he is or is not.

(Testimony of Harold R. Lonnberg.)

Q. For your information, Mr. Howard is now in the East and not available to testify. Did you know that before you made [219] this statement?

A. I did not.

Mr. Tobriner: Objected to on the ground this is utterly immaterial, where Mr. Howard may happen to be.

Trial Examiner Ruckel: Just a moment. Objection sustained.

Mr. Hecht: Very well.

Q. (By Mr. Hecht): Did Mr. Howard tell you that he had made such a request? A. Yes.

Q. When?

A. It was prior to this trip to the plant.

Q. You don't know of your own knowledge that Mr. Howard had made such a request?

A. I do not.

Q. You do not. You are merely relying, then, on what Mr. Howard told you?

A. That is right.

Q. Correct. Did you, after August 25, make any approach to the company to be permitted to enter the plant for the purpose of doing electioneering? A. No, I did not.

Q. As I understand it, Mr. Lonnberg—you will have to help me—I don't know the physical set-up of the plant—there is a cyclone fence around the buildings? [220] A. Yes.

Q. And a gate also, a cyclone fence that moves back and forth? A. Swings.

Q. Or opens and swings. And at this gate there

(Testimony of Harold R. Lonnberg.)

is a sentry box, sort of, where there is a watchman?

A. There was a watchman at the gate, yes.

Q. This watchman makes you register as you come in, did he not? A. He didn't this time.

Q. He did not ask you to register?

A. He did not.

Q. You knew it was the practice to register?

A. I had never been required to register going in there before.

Q. Before you were an employee?

A. That is right.

Q. But you knew that persons who were not employees were required to register?

A. I had not noticed that practice, no.

Q. You know there is a sign on the gate that so states? A. I had not observed it.

Q. You had not observed it in your four years of employment in the plant?

A. The gate was always open when I went through it. [221]

Q. And the sign was not there, to your knowledge?

A. It may have been. I don't know. I didn't observe it.

Mr. Tobriner: Objected to.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Lonnberg, will you look at the document I hand you and see if you can identify it?

A. (Examining document) Yes, this is similar to the letters the other three men received.

(Testimony of Harold R. Lonnberg.)

Q. Would you say that was a copy of the letter you received?

Mr. Rowell: Let's have the letter specified. Which letter are you talking about, Mr. Edises?

Mr. Edises: Mark that for identification, please.

Mr. Rowell: In other words, the witness testified he received two letters.

Mr. Edises: Would you mark that for identification, please?

(Thereupon the document above referred to was marked Intervener's Exhibit No. 4 for identification.)

Q. (By Mr. Edises): Intervener's No. 4 is a copy of a letter bearing date of July 31, 1945, addressed to Mr. Harold Lonberg, 1245 60th Avenue, Oakland, California.

I ask you if you can identify this as a copy of a letter which you received on or about that date?

A. (Examining document) It looks almost like it.

Q. Yes. [222] A. As near as I can tell.

Q. You later received a letter from the Union stating that you were going to be tried on October 3, isn't that correct? A. Approximately.

Q. Did you show up for the trial?

A. I did not.

Q. Did you take part in the meeting of employees of the company which took place on September 30? A. I did.

Q. Did you participate in that——

(Testimony of Harold R. Lonnberg.)

Mr. Royster (interposing): Do you mean July 30?

Mr. Edises: Sorry; July 30.

Q. (By Mr. Edises): Your answer is "Yes"?

A. Yes.

Mr. Edises: Do we have the minutes of that? I think it is Intervener's 2.

(The document was handed to Mr. Edises.)

Q. (By Mr. Edises): These have been identified as the minutes of that meeting, Mr. Lonnberg, and I would like to call your attention to the third paragraph.

Would you read that, please?

A. (Examining document.)

Q. That reads, does it not, "Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shop Stewards laid off by management at request of I.L.W.U. [223] officials. If Shop Stewards don't work, nobody works. Carried unanimously."

Does that comport with your recollection of the resolution that was made and carried at that meeting? A. Yes.

Q. And then calling your attention to the fifth paragraph "Motion to Elect a two-member negotiating committee. Nominated and seconded were E. H. Thompson, Wm. Sherman, H. Lonnberg, and Lincoln Olsen. An amendment to the motion that the 4 members nominated to be elected, amendment seconded. Amendment carried and motion carried unanimously."

(Testimony of Harold R. Lonnberg.)

Does that likewise comport with your recollection? A. It does.

Q. And the H. Lonnberg referred to there is yourself, is it not? A. That is right.

Q. And pursuant to that authorization you went to the Company the next day, did you not, and demanded the reinstatement of the Stewards?

A. We did.

Q. And just what took place at that time?

A. We had to wait until Mr. Railey was in the plant. Then the four of us got together and presented ourselves to Mr. Railey in Mr. Railey's office. We asked for the reinstatement of the Stewards upon the job. It was talked pro and con, [224] and he told us that——

Q. (Interposing): Did you tell him who you were? A. We did.

Q. Did you tell him what your authority was?

A. We told him we represented the employees of the plant, and the purpose was to try and reinstate the Stewards on the job.

Q. Did you conceal from him the fact that you had authority to stay away from work if your demand was not granted?

Mr. Rowell: I object to the form of that question, Mr. Examiner.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Did you mention that?

Mr. Tobriner: Objection on the ground I don't know what counsel means when he says——

Trial Examiner Ruckel: Objection sustained.

(Testimony of Harold R. Lonnberg.)

Q. (By Mr. Edises): Did you mention the fact that the membership had authorized staying away from work unless the demand was carried out?

A. I didn't mention it. Brother Sherman was our spokesman.

Q. Did he mention it?

A. I don't recall.

Q. Your demand was turned down, wasn't it?

A. He told us that he could not hire the men back because of the agreement with the ILWU.

Q. Then what happened next?

A. He then asked us, or he left the office and came back and told us that the officials of the Warehouse Union were over in Mr. Altman's office and asked us if we would meet with them. At first we refused to, but then we finally acceded to meeting with them. So they came into the office, and Mr. Railey made an extensive speech which amounted to that under the terms of the contract the company's hands were tied, and also the National Labor Relations Act would enter into the picture.

Q. What happened next?

A. So in the ensuing conversation the four men were authorized that there were letters in the mail stating to the Company that they were no longer in good standing with the ILWU, so we were to be suspended, and they asked Mr. Lincoln Olsen's name, because they did not have his name.

Q. Yes. What happened next?

(Testimony of Harold R. Lonnberg.)

A. The meeting broke up and the five Stewards left the plant and so did the Union officials.

Q. The five Stewards were present during this conversation?

A. They were, while the conversation was going on, yes.

Q. Yes. And then what took place after this conversation?

A. The Stewards and the Union officials were asked to leave the plant, and the four of us left the office, and Mr. Railey spoke, as has been testified, to us in front of Mr. [226] Smith's office.

Q. Well, then, what did you do after that?

A. I went back to my job.

Q. Yes. Oh, by the way, before you went back to your job, the four of you had been together? You left the office in a group, did you?

A. Yes.

Q. Did you say anything to each other?

A. No.

Q. You just walked out silently, huh?

A. That is right.

Q. What? A. That is right.

Q. What was the first thing you said to each other after you left the office?

A. Well, Mr. Railey started a conversation with us outside of Mr. Smith's office.

Q. With the four of you?

A. The four of us.

Q. And what was the substance of that conversation?

(Testimony of Harold R. Lonnberg.)

A. He said that he was sorry that things were the way they were, he would like to see us back there to work.

Q. Yes. And then what did you do next?

A. I went back to my job, and various people asked me what took place, and I told them. [227]

Q. And what did you do next?

A. I went to the meeting.

Q. What meeting?

A. At noon; at 12:15.

Q. What was done in regard to having the employees leave their jobs?

A. Well, the employees were fully informed of the previous action, as a matter of fact it was their action, and we informed them the results of the meeting, so they went to a meeting at 12:15.

Q. I want to be sure that I understand you. You say that they were fully informed of their previous action. You mean to say that it was generally known throughout the plant?

A. That is right.

Q. That a resolution had been passed in the shape of the resolution contained in these minutes?

A. That is right.

Q. And, if I understand you correctly, when you informed the employees that you had been successful in accomplishing your mission, they then understood that the resolution was to be carried out, is that correct? A. That is right.

Q. And how long after you notified the em-

(Testimony of Harold R. Lonnberg.)

ployees that you had not succeeded in getting the Stewards back did they walk out? [228]

A. As it has been testified, that meeting broke up at approximately 11 o'clock.

Q. So it was about one hour later, is that right?

A. Approximately, yes.

Q. Now, just what did you do personally about notifying the employees of the results of the conference?

A. As I went back to my department various people approached me and asked me the results, and I informed them.

Q. Did you make any kind of a circuit around the plant? A. I did not.

Q. Did any of the other members of the committee, to your knowledge?

A. Brother Thompson did.

Q. Just what did he do, if you know?

A. He ran around and informed various people within various departments the result of the meeting.

Q. And then you remained away from work to the same extent as the rest of the people, two and a half days, is that right?

A. That is quite obvious. I was suspended.

Q. I didn't ask you whether it was obvious or not. I just asked you whether you remained away from work from that time on?

A. I haven't worked for that company since.

Q. Did you speak in favor of the resolution

(Testimony of Harold R. Lonnberg.)

at the time [229] that it was adopted on July 30?

A. Which resolution?

Q. The resolution in regard to getting back the Shop Stewards? A. I believe I did.

Mr. Tobriner: Would you please refer to the resolution, Mr. Edises? It isn't quite clear just what you do mean.

Mr. Edises: "Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shop Stewards laid off by management at request of I.L.W.U. officials. If Shop Stewards don't work, nobody works. Carried unanimously."

Q. (By Mr. Edises): Did Mr. Sherman speak in favor of that resolution?

A. Mr. Sherman was the Chairman.

Q. Would you answer the question, please?

A. I don't recall.

Q. Did Mr. Thompson speak in favor of the resolution?

A. I don't recall that he spoke for or against it, I mean after the resolution was made, but I think he said something about it previous to that.

Q. Did Mr. Lincoln Olsen speak in favor of the resolution?

A. I don't believe Mr. Olsen spoke at that meeting.

Q. Now, were there any activities, or was there any program adopted for keeping the employees together during the time of the walkout, keeping them informed of what was going on, [230] and so on? A. Yes.

(Testimony of Harold R. Lonnberg.)

Q. Would you describe that program, please?

A. I believe that program was set up on July 31. There were various employees of the Company to receive telephone calls from the people within their department concerning what was taking place.

Q. And was there anything in the nature of a strategy committee?

A. I believe the four men, along with others, were to carry out the strategy.

Q. Well, what four men? When you speak of the "four men," you mean the four committeemen?

A. That is right.

Q. Well, what four men? Thompson, Sherman, Lonnberg, and Olsen, is that right?

A. That is right.

Q. Do you remember any other persons who participated in this strategy committee?

A. I would rather not name them, because some of them are still working at Colgate-Palmolive-Peet's.

Q. Leave those persons out.

A. The five Stewards were included.

Q. Were included. Now, Mr. Lonnberg, had you ever been an officer of Local 6, CIO? [231]

A. I served two years on the Investigating Committee, one year of which I served as Chairman.

Q. Yes. And were you an active union member of the CIO? A. I was.

Q. And I suppose you were familiar with the policies of the Union? A. I was.

Q. Were you aware that the ILWU had

(Testimony of Harold R. Lonnberg.)

pledged that it would not tolerate any strikes or stoppages of work during the duration of the recent war?

A. That was a directive handed down by the Executive Board of the International, as I understand it.

Q. Well, you knew that it was the official action of the Union, did you not?

A. Well, that was what I knew, it was a directive down from the Executive Board.

Q. Well, you are not contending that you did not know that that was the official union policy, are you?

A. Well, the Executive Board evidently was the policy board.

Q. Uh huh. Are you intimating that you were opposed to that policy?

Mr. Rowell: Well, now, that is immaterial.

Mr. Royster: I object.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Now, you stated on the 25th of August, while you were in the plant with Mr. Harvey Howard and Mr. Luchsinger, you spoke to a number of employees, and that not only did employees talk to you but also foremen spoke to you; is that right? A. That is correct.

Q. And you very courteously declined to name the foremen, but I trust that you have no similar objection to telling us what you discussed with these foremen?

(Testimony of Harold R. Lonnberg.)

A. They asked us how things were going, and we informed them, "So far they looked fairly good."

Q. They looked fairly good. That seemed to make them happy?

Mr. Tobriner: Objection.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: No further questions.

Mr. Hecht: I have a couple of more questions.

Mr. Royster: Well, I guess I am entitled to have a second crack now on the redirect, am I not?

Trial Examiner Ruckel: You may examine.

Redirect Examination

By Mr. Royster:

Q. At the meeting in Mr. Railey's office on July 31, Mr. Lonnberg, did you see a telegram at that meeting?

A. It came in during that meeting. [233]

Q. And to whom was it delivered?

A. To Mr. Railey.

Q. Did Mr. Railey open the telegram?

A. I believe he did.

Q. Did you see the message?

A. No, I don't believe I did.

Q. Did he make any comment on the message to you or to the others there?

A. He commented that he had now received the telegram from the Welfare Employees Association.

Q. Had there been any prior conversation about such a telegram?

(Testimony of Harold R. Lonnberg.)

A. Brother Sherman had informed him of such telegram.

Q. Well, what had he told him about a telegram?

A. He told him that "If you haven't received a telegram yet, it will be forthcoming."

Q. And what telegram? Did he tell Mr. Railey what the telegram was about?

A. I believe he told Mr. Railey that it was notification of our severance with the Warehouse Union.

Mr. Hecht: Mr. Royster, may I suggest that if Mr. Sherman is available to testify that he probably could do a better job of it?

Mr. Royster: Mr. Sherman will be on. That is all I have. [234]

Recross-Examination

By Mr. Hecht:

Q. Mr. Lonnberg,—

Trial Examiner Ruckel (interposing): Are we through over on this side of the table?

Mr. Rowell: I am not sure. Just a moment.

No questions.

Q. (By Mr. Hecht): You attended this dinner meeting on July 26? A. I did.

Q. Do you know whether any minutes were taken of that meeting?

A. I don't believe there were.

Q. I believe you also attended the meeting of July 30? A. I did.

(Testimony of Harold R. Lonnberg.)

Q. Were you at the door like Mr. Olsen was?

A. I was not.

Q. You were on the floor, I take it, or on the platform?

A. I was over on the lefthand side of the building going in, on the raised platform.

Q. Do you know whether any reference was made at that meeting to minutes of the meeting of July 26?

A. There was not.

Q. Do you know whether the Chairman or the Recording Secretary of that meeting made any remarks—just answer the question “Yes” or “No”—with reference to questions of [235] racial discrimination?

A. Would you restate that question, please?

Q. Was anything stated from the platform on July 30 with reference to racial discrimination?

Mr. Rowell: That is objected to as utterly immaterial.

Mr. Royster: I will join the objection.

Trial Examiner Ruckel: Objection sustained.

Mr. Hecht: Mr. Examiner, may I have permission then to recall this witness after I put in my case? Certain matters have come within the Company's knowledge connected with the question I have asked, and if I may introduce that evidence by means of the Company's officers, but in that case I will have to recall——

Trial Examiner Ruckel (interposing): It may become relevant. Is this witness going to be around?

The Witness: I am working.

(Testimony of Harold R. Lonnberg.)

Trial Examiner Ruckel: You are working in the city?

The Witness: In Oakland, or in Berkeley, rather.

Mr. Edises: Perhaps counsel could make this witness his own witness just for the purpose of asking him——

Mr. Rowell: That doesn't make the question any more material.

Mr. Edises: It would be simply taking him out of turn, avoiding the necessity of recalling him.

Mr. Hecht: I would be glad to do that. [236]

Trial Examiner Ruckel: I think maybe it wouldn't be an issue in the case. You will have ample time to get in touch with him.

Mr. Rowell: He will be available.

Mr. Hecht: All right. Then another question, Mr. Lonnberg.

Q. (By Mr. Hecht): On August 25 you entered the plant at about noon, did you not?

A. I don't recall the exact time.

Q. You entered the plant together with a number of other employees that were going to work, did you not? A. No.

Q. You are certain of that? A. I am.

Q. You are certain that there was a watchman in that sentry office?

A. I am, because I spoke to him.

Q. And did the sentry, to your knowledge, know that you were no longer an employee?

(Testimony of Harold R. Lonnberg.)

A. I don't recall whether we mentioned it to him or not.

Q. And he may well have assumed that you were still an employee?

Mr. Tobriner: Objected to on the ground whether he did or not assume it is something that is entirely suppositious and calls for a conclusion.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Hecht): Do you know the name of the watchman?

Mr. Rowell: Do you want to take action against the watchman now, Mr. Hecht?

A. I would prefer not to name the man. He is still employed there.

Mr. Hecht: I don't think there is any harm in having the name of the watchman. After all, he knew him and he spoke to him, unless Mr. Lonnberg probably believes that it was wrongful to enter without registering, and that some harm may come to the watchman because Mr. Lonnberg did not comply with Company regulations.

Mr. Tobriner: Will those remarks of counsel please be stricken, imputing anything to Mr. Lonnberg?

Trial Examiner Ruckel: They may be stricken, but we cannot go on withholding names.

Mr. Rowell: We are advised that the watchman has since died, and, therefore, is beyond the reach of the company.

Mr. Hecht: We will exhume him.

(Testimony of Harold R. Lonnberg.)

Q. (By Mr. Hecht): So may we have the name of the watchman, please?

A. I don't know the man's full name. I believe his name was Otto.

Q. Otto. If I told you his name was Otto Lindberg, would you recognize the last name? [238]

A. I am not familiar with the man's last name.

Q. Were you wearing your badge?

A. No.

Mr. Hecht: That is all.

Mr. Rowell: Could I ask just one question?

Trial Examiner Ruckel: Go ahead.

Redirect Examination

By Mr. Rowell:

Q: Did you observe, and are you able to state with reasonable accuracy the number of people present at that July 30 meeting, Mr. Lonnberg?

A. At the July 30 meeting there was approximately 275.

Trial Examiner Ruckel: Any further questions?

Mr. Rowell: No further questions.

Mr. Edises: May I offer Intervener's 4? It has been identified.

Trial Examiner Ruckel: It may be received.

(Thereupon the document heretofore marked Intervener's Exhibit No. 4 for identification was received in evidence.)

Trial Examiner Ruckel: That is all.

(Witness excused.)

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record. [239]

Mr. Hecht: May I recall Mr. Lonnberg for just a couple of questions?

HAROLD R. LONNBERG,

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, was examined and testified further as follows:

Recross-Examination

By Mr. Hecht:

Q. Mr. Lonnberg, I think you have testified that you were a member of a Strategy Committee on behalf of the AF of L?

A. If it can be called that.

Q. Are you familiar with something called "Progress Reports," a leaflet?

A. I saw some of them.

Q. Do you know if they were prepared under the direction of the Strategy Committee?

A. Most of them were prepared under the direction of Mr. Harvey E. Howard, our representatives.

Q. And, speaking generally of the leaflets, were they distributed at the plant, do you know?

Mr. Rowell: If you know?

A. I did not know that they were distributed at the plant. I did not know anyone had distributed them.

Q. (By Mr. Hecht): Do you know what the purpose of these leaflets was then? [240]

Mr. Tobriner: I object on the ground the leaflets will speak for themselves.

(Testimony of Harold R. Lonnberg.)

Trial Examiner Ruckel: He may answer.

A. They were pursuant to an election to be held between the CIO and AF of L.

Q. (By Mr. Hecht): They were intended to be distributed, were they not, Mr. Lonnberg?

A. They were.

Mr. Tobriner: Objected to.

Q. (By Mr. Hecht): Did your Strategy Committee have any plan for the purposes of distributing these leaflets?

A. I didn't have any knowledge of it.

Q. You didn't. Do you know of anybody who has any knowledge of it?

A. If there was any such plan I believe Brother Luchsinger can answer.

Q. Brother Luchsinger can answer. Do you know who attended to the writing and mimeographing of these leaflets?

A. Mr. Harvey E. Howard.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

We will recess until 1:30. [241]

(Whereupon, at 12:00 a. m. a recess was taken until 1:30 p. m. of the same day.) [242]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 p. m.)

Trial Examiner Ruckel: The hearing will be in order.

Mr. Royster: Mr. William Sherman.

WILLIAM SHERMAN,
called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address for the record, Mr. Sherman.

A. My name is William Sherman. I live at 1515 Kains Avenue, Berkeley.

Q. Are you at present employed?

A. Yes, I am.

Q. What is your employment?

A. I am working for the Yellow Cab Company in Oakland.

Q. You were employed by the respondent, were you not? A. That is true.

Q. And for what period of time?

A. From June 15, 1929, until August 4, 1945.

Q. Were you a member of the CIO during your employment with the Company? A. I was.

Q. For what period?

A. 1938 until the termination of my employment, I suppose.

(Testimony of William Sherman.)

Q. Mr. Sherman, did you attend a meeting of Colgate employees on July 30, 1945?

A. I did.

Q. And were you Chairman of that meeting?

A. I was.

Q. And you were selected as one of a committee of four to go to the respondent? A. I was.

Q. Do you know anything of a telegram sent to the ILWU on July 30, 1945?

A. I know of two telegrams, one sent to the ILWU, and one sent to the Colgate-Palmolive-Peet Company; Mr. Railey.

Q. Well, I show you Board's Exhibit 5 and ask you if that is one of the telegrams?

A. (Examining document): That is a copy of one of the telegrams.

Q. And I show you Board's Exhibit 6.

A. (Examining document.)

Q. Is that also a copy of the telegram sent to the company?

A. That is a copy. Pardon me. That is my recollection.

Q. Now, did you go to Mr. Railey's office on the morning of July 31, Mr. Sherman? A. Yes.

Mr. Hecht: May I see those, please?

Mr. Royster: Yes. I just had them typed up (handing documents).

Mr. Hecht: Yes.

Q. (By Mr. Royster): At this meeting in Mr. Railey's office on the morning of July 31, Mr. Sherman, was there any mention of a telegram?

(Testimony of William Sherman.)

A. Yes. I told Mr. Railey that we had sent a telegram and that he probably would receive it very shortly.

Q. And do you know whether or not he did receive it?

A. If I can recall correctly, he did receive it while we were in the meeting.

Q. Did he so announce to you?

A. Yes, he did.

Q. Did you have a telephone conversation with Mr. Altman on August 2? A. I did.

Q. And what was that conversation?

A. Well, my vacation was ending on August 4, and I still hadn't received any notice from the Union or company to the effect that my employment there was terminated, outside of verbal, they told me in the office, and I didn't know exactly what status I stood in as far as employment was concerned, and I asked him what I would do on August 4, whether I would return to work or not. And [245] he informed me that I was one of the ones to be suspended, and that there wouldn't be any use of me coming down there to be fired.

Q. Now, Mr. Sherman, I show you what purports to be a copy of a letter, and I will ask you if you received the original of it.

A. (Examining document): I can't say as to whether this is the original. However, I still have the original if it is——

(Testimony of William Sherman.)

Q. (Interposing): Do you have it with you?

A. Yes, I have.

Q. May I see it, please?

A. This letter is dated July 30, 1945. However, I didn't receive it prior to the telephone conversation I had with Mr. Altman.

Mr. Royster: I offer the writing in evidence as Board's Exhibit 11.

Mr. Rowell: No objection.

Mr. Hecht: No objection.

Trial Examiner Ruckel: It will be received.

(Thereupon, the document above referred to was marked Board's Exhibit 11 and received in evidence.)

Q. (By Mr. Royster): Did you become a member of the AF of L, Mr. Sherman? A. I did.

Q. That was subsequent to your suspension?

A. Following my suspension, yes.

Mr. Hecht: I beg your pardon?

(The answer referred to was read by the reporter.)

Mr. Royster: I think perhaps I better clear that a little bit.

Q. (By Mr. Royster): When do you understand that you were suspended?

A. Well, I understand that I was suspended as of July the—or August 2 when I called Mr. Altman.

Mr. Hecht: Mr. Royster,—

Mr. Royster: Yes.

Mr. Hecht: Might I suggest the best evidence

(Testimony of William Sherman.)

of Mr. Sherman's suspension might be the letter that is already in evidence with reference to the first nine men who were suspended?

Mr. Royster: That was a letter from the ILWU to the Company.

Mr. Hecht: Yes, and I think there has been testimony that the letter was referred to at the meeting of July 31.

Mr. Royster: The only point I had in mind here was in establishing a little bit more closely the date that he became a member of the AF of L. I should have done it without all this circumfusion.

Q. (By Mr. Royster): What date did you join the AF of L, [247] if you recall?

A. I think that I signed an application for the International Chemical Workers Union on August 3rd, on or about. I am not quite sure.

Q. Have you attempted to seek reinstatement of your employment at the respondent?

A. Well, I have twice, once by telephone, and another time, on August 17, with eight other people who were suspended.

Q. Did Sanford Moreau accompany you to the respondent's office on August 17? A. He did.

Q. And Clyde W. Haynes? A. He did.

Q. You have heard the testimony of the other witnesses in that respect, have you, Mr. Sherman?

A. Yes, I have.

Q. And do you have anything to state other than what they have said about the result of that meeting?

(Testimony of William Sherman.)

A. Well, to the best of my knowlewge, we went to the gate, and until the last whistle blew—at such time we went into Mr. Altman's office, and I think the conversation was, or the question was as to why were we there.

Trial Examiner Ruckel: Well, counsel asked you if your testimony would be about the same as that of the other [248] witnesses you heard?

The Witness: Approximately the same.

Trial Examiner Ruckel: Is there any material change that you care to make?

The Witness: Not of any value that I can think of, that is, the words that I would put it in might be a little different, what I would say.

Trial Examiner Ruckel: But in substance that is correct from your recollection, is that right?

The Witness: That is right.

Q. (By Mr. Royster): You acted as spokesmen for the group on this occasion, did you, Mr. Sherman? A. I did.

Mr. Royster: I believe that is all.

Q. (By Mr. Rowell): Mr. Sherman, at this meeting of July 30 did you make an attempt to count or estimate the number of employees there?

A. There was a count taken.

Q. Do you know the result of that count?

A. To the best of my knowledge it was between 270 and 275.

Q. All right. And as to the meeting of July 31,

(Testimony of William Sherman.)

was there a count or an estimate made of the number of employees present?

A. I think there was a count, but I can't recall just what the figures were. [249]

Q. Would you say it was over 200?

A. It was far over 200; at least 250, if I remember correctly.

Mr. Rowell: May we go off the record for just a moment, Mr. Examiner?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Rowell): You were on vacation during the time. What were the dates, the beginning and ending of your vacation?

A. Well, the vacation was to end August 4; it was the two weeks preceding August 4, whatever that date would fall on. I can't remember now.

Q. You were on vacation on July 30, 31 and August 1 and August 2?

A. I was, that is right.

Mr. Rowell: That is all I have. Nothing further.

Cross-Examination

By Mr. Hecht:

Q. Mr. Sherman, were you present at a dinner meeting of the Welfare Employees Association July 26? A. I was.

Q. Mr. Sherman, did you preside at that meeting, too? A. I did.

(Testimony of William Sherman.)

Q. Were there minutes of that meeting taken?

A. I don't think there was.

Q. You are certain there were no minutes?

A. I am not going to say I am certain, because I don't know exactly. Somebody might have been taking minutes that I didn't—not to my knowledge there were no minutes of the meeting.

Q. Do you know if there was anyone appointed to take minutes of that meeting? A. No, I don't.

Q. Do you know whether minutes purporting to be that of the meeting of July 26 were read at the meeting of July 30? A. There was not any that I know of.

Q. You were presiding at that meeting, too?

A. That is right.

Q. Will you tell me, if you know, who took the count of the employees at the meeting of July 30?

A. I think Lincoln Olsen was one of them. Who the other was, or the others were, I don't know.

Q. From whom did you receive your information?

A. I received it by a piece of paper that was put in front of me during the meeting.

Q. Have you that piece of paper?

A. No, I haven't.

Q. Do you know who gave you the piece of paper?

A. I think Lincoln Olsen brought it up. [251]

Q. Who took the count of the employees in the meeting on July 31? A. 31?

(Testimony of William Sherman.)

Q. Yes. A. Sorry, I don't recall.

Q. How did you get to know that there was that number of employees there?

A. Going by my recollection to a thing that happened six months ago. That is all I can say.

Q. You don't recall anybody giving you the information?

A. No. It was word of mouth if——

Q. Somebody told you?

A. That is right.

Q. So that all you have testified to as to the number of members present is something somebody, that you don't recall, told you?

A. That is right.

Q. Mr. Sherman, you have testified that you signed an application for membership in the Chemical Workers Union, A. F. of L., on or about August 2?

A. 2nd or 3rd, on or about. I don't know.

Q. Yes. When did you become a member?

Mr. Rowell: That is objected to. It is asking for the conclusion of the witness.

Mr. Royster: I object to it on the grounds of its [252] materiality.

Mr. Hecht: It is a preliminary question, Mr. Examiner.

Trial Examiner Ruckel: He may answer if he knows.

A. I think I have answered it already.

Q. (By Mr. Hecht): In other words, it is your

(Testimony of William Sherman.)

understanding of the rules of the A. F. of L. that upon filing your application you become a member?

A. Providing your application is acceptable.

Q. Yes. Was it acceptable and accepted?

A. It must have been. I am a member now.

Q. When did you become a member? Were you a member—let me put it this way: Were you a member on August 17? A. Yes.

Q. Mr. Sherman, you have been in the past an officer of the ILWU, haven't you?

A. Correct.

Q. And you are familiar with the ILWU constitution and by-laws?

A. Well, I probably was a great deal more familiar at the time I was an officer than I am right now.

Q. Yes. Well, you were quite familiar with those rules on August 17, let us say?

A. I would say "Quite," yes.

Q. Yes, sir. Mr. Sherman, as a former officer of the ILWU and as an employee of the Respondent, have you any [253] recollection or any memory of a contract dated July 9, 1941, between the Respondent and the ILWU? A. I have.

Mr. Hecht: May I have the Board's Exhibit 7?

(The document was handed to Mr. Hecht.)

Q. (By Mr. Hecht): I am showing you Board's Exhibit 7, a copy of the contract which I have just referred to. A. What section, please?

Q. Section 3 on the first page.

A. (Examining document): Yes.

(Testimony of William Sherman.)

Q. On August 17 you already knew that you had been—or, rather, withdrawn that.

On August 17, 1945, you knew that the Respondent had been notified by authorized officers of the ILWU that you were no longer a member in good standing of the ILWU?

A. I can't say that I knew it for certain. I don't know what conversations took place.

Q. Did you see the letter of July 30, or 31—I don't recall—1945, which Mr. Railey had in his office when that meeting was had in his office on July 31?

A. What letter are you referring to?

Q. From the ILWU to the Respondent?

A. No, I did not.

Q. At any rate, you were a member of the A. F. of L. on August 17? [254]

A. According to my recollection, yes.

Q. Did you think that as a member of the A. F. of L. you could obtain employment in a plant having a closed shop contract with the CIO?

Mr. Rowell: Now, wait a minute! That is certainly objectionable.

Mr. Royster: I will object.

Mr. Hecht: No, it isn't.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: Mr. Examiner, when an official body of the United States government, namely, the United States Labor Relations Board, takes a charge from persons who are seeking reinstatement with the Company, issues a complaint on it, orders a hear-

(Testimony of William Sherman.)

ing on it, at least there is some prima facie evidence that it is at least conceivable that these people are entitled to employment at the Respondent's plant. Now, this continual questioning to try to show this is bad faith to request reinstatement——

Trial Examiner Ruckel: Why argue? Your objection has been sustained.

Q. (By Mr. Hecht): Mr. Sherman, I show you a photostatic copy of a letter dated July 31, 1945, on the stationery of the ILWU, addressed to Colgate-Palmolive-Peet Company.

Will you look at this copy and tell me whether you have seen the original or a copy before? [255]

A. (Examining Document): I have never seen it.

Q. Mr. Sherman, there has been some testimony here as to a Strategy Committee formed by persons who had formerly belonged to the Employees Welfare Association to carry on an election campaign for the AFL.

Did you hear of such a Strategy Board?

A. The term "Strategy" was never——

Q. (Interposing): Call it what you will.

A. It was never used, to my knowledge. There was a committee selected as contact people. That is the word we used.

Q. Were you here this morning when Mr. Lonnberg testified? A. I was.

Q. Did you hear Mr. Lonnberg's answers to my questions with reference to certain mimeographed leaflets?

(Testimony of William Sherman.)

A. I don't know what mimeographed leaflets you are referring to.

Q. I will show you one. I have one with your photograph, as a matter of fact.

A. I am familiar with what they call the progress report, yes.

Q. Can you tell us who prepared those reports?

A. Why, they were prepared in the office of Harvey Howard.

Q. You heard Mr. Lonnberg testify this morning that it was intended that they be distributed among the employees of the plant? [256]

A. Well, we didn't intend to use them for wall-paper.

Mr. Hecht: Will you answer my question?

Mr. Rowell: He has answered it.

Q. (By Mr. Hecht): In other words, you intended them to be distributed?

A. I didn't think—they were intended to be distributed, yes.

Q. Did you have any part in the distribution of those leaflets? A. I did not.

Q. You did not? A. No.

Q. Can you tell me who distributed those leaflets or attended to it? A. No.

Q. You don't know? A. I do not.

Q. Were they distributed to you?

A. Yes, I got a copy through the mail.

Q. You got copies through the mail?

A. That is right.

(Testimony of William Sherman.)

Q. Will you tell me if you got a copy of this one (handing document)?

A. (Examining document): I am sorry. I can't recall this particular one, or haven't got a copy of this particular [257] one.

Q. You will note below that it called for a meeting for August 8. A. That is right.

Q. Do you recall it now?

A. I still can't recall whether I got any knowledge of the meeting through that pamphlet or not.

Q. Would you say that it was one of those leaflets that was prepared at the office of Harvey Howard?

A. Oh, I think they were all prepared there.

Mr. Hecht: May we have this marked for identification as the Respondent's Exhibit 1?

Mr. Rowell: Well, I object to the introduction. The testimony has only been so far——

Mr. Hecht: Only for identification.

Mr. Rowell: Well, all right. I will withdraw the objection.

(Thereupon, the document above referred to was marked Respondent's Exhibit 1 for identification.)

Q. (By Mr. Hecht): I show you Respondent's Exhibit 1 for identification, dated August 7, 1945.

A. Yes.

Q. That was also prepared in Mr. Harvey Howard's office? A. That is right.

Mr. Hecht: May we have this marked Respondent's Exhibit [258] 2 for identification?

(Testimony of William Sherman.)

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 2 for identification.)

Mr. Royster: I think we can stipulate, probably, that whatever you have there came from Mr. Howard's office.

Mr. Hecht: All right, if you wish to stipulate.

Mr. Royster: I would like to look at them.

Mr. Hecht: Before stipulating?

Mr. Royster: Yes. You might be mistaken as to where some of those came from.

Mr. Hecht: Well, the witness can identify them.

Q. (By Mr. Hecht): I show you another leaflet dated August 10, 1945.

A. (Examining document): I couldn't very well identify these without studying them line for line because I don't know—in fact, I might have to even compare them with some that I still have around the house to identify them as exactly the ones.

Q. You can't identify that one?

A. No, I can't identify this one, or any of them, that is, for a certainty.

Q. Have you changed your mind, Mr. Sherman—

Mr. Rowell (interposing): Well, now, wait a minute. Obviously he is being a very careful witness. You wouldn't be able to state that something was a copy of something you [259] saw six months ago word for word, necessarily.

(Testimony of William Sherman.)

Mr. Hecht: There are lots of things of which they have a very clear recollection that occurred six months ago, Mr. Rowell.

Mr. Edises: May we go off the record for a moment, Mr. Chairman?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Better mark this Respondent's Exhibit 3 for identification.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 3 for identification.)

Trial Examiner Ruckel: We will recess for five minutes.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Mr. Hecht: Mr. Examiner, it is stipulated by and between counsel for the Board, counsel for the complainants, counsel for the intervener, and counsel for the respondent that certain mimeographed leaflets, most of which bear the title, "Progress Reports," were mimeographed and prepared at the office of Harvey Howard—

Mr. Edises (interposing): May I interrupt? I don't think that is material. My understanding is that some of these things, not all of these things, were Howard's jobs. [260] There was collaboration and various people worked on them.

(Testimony of William Sherman.)

Mr. Hecht: I say that they were merely prepared and mimeographed at his office.

Mr. Royster: On behalf of the AF of L Union.

Mr. Edises: Why not put it that way?

Mr. Hecht: On behalf of the AF of L members for the purpose of being distributed among the employees of the respondent.

And if the Examiner wants, I will just read off the dates to be admitted in that order.

Trial Examiner Ruckel: Why don't you just have them marked, giving them the next succeeding number?

Mr. Hecht: 4 will be one dated September 12, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 4 for identification.)

Mr. Hecht: Another is September 15, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 5 for identification.)

Mr. Hecht: Another dated September 18, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 6 for identification.)

Mr. Hecht: The next is dated September 27, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 7 for identification.)

(Testimony of William Sherman.)

Mr. Hecht: The next is dated September 29, 1945. [261]

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 8 for identification.)

Mr. Hecht: The next is dated October 2, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 9 for identification.)

Mr. Hecht: The next is dated October 9, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 10 for identification.)

Mr. Hecht: And October 11, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 11 for identification.)

Mr. Hecht: And October 12, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 12 for identification.)

Mr. Hecht: October 13, 1945.

(Thereupon, the document above referred to was marked Respondent's Exhibit No. 13 for identification.)

Mr. Hecht: October 15, 1945.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 14 for identification.)

(Testimony of William Sherman.)

Mr. Hecht: And then there is a ballot without date which will be next in order.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 15 for identification.)

Trial Examiner Ruckel: Is that stipulated to, gentlemen? [262]

Mr. Edises: So stipulated.

Mr. Rowell: So stipulated.

Mr. Royster: So stipulated.

Mr. Hecht: So stipulated.

Trial Examiner Ruckel: They will be received.

(Thereupon the documents heretofore marked Respondent's Exhibits Nos. 1 to 15 inclusive, for identification, were received in evidence.)

Trial Examiner Ruckel: Now, for my information, what materiality is claimed for these?

Mr. Hecht: May it please the Examiner it is charged in the complaint that we did not permit the distribution of AF of L circulars while permitting the distribution of CIO circulars throughout the plant.

Our answer pleads that innumerable leaflets emanating from both sides were distributed in the plant and that we in no wise interfered with the distribution of——

Mr. Rowell: Well, I presume the offer will be tied up with proof of distribution?

Mr. Hecht: Yes.

(Testimony of William Sherman.)

Trial Examiner Ruckel: At least these are the pamphlets referred to?

Mr. Hecht: Yes.

Q. (By Mr. Hecht): Mr. Sherman, you were, you said, [263] presiding at the meeting of October 30, 1945?

Mr. Royster: That is July 30.

Q. (By Mr. Hecht): July 30, 1945?

A. That is right.

Q. Was there anything stated by anybody on the platform having to do with the question of racial discrimination?

Mr. Rowell: That is objected to as utterly immaterial.

Mr. Royster: I object.

Trial Examiner Ruckel: Read the question, please.

(The question referred to was read by the reporter.)

Trial Examiner Ruckel: What date was this?

Mr. Hecht: July 30, 1945.

Trial Examiner Ruckel: Objection sustained. You may wish to recall him later. This may not be a factor in the case.

Mr. Hecht: All right. When do you expect to close, Mr. Royster?

Mr. Royster: I think Friday evening.

Mr. Hecht: And we will continue on Saturday, I take it, Mr. Examiner?

(Testimony of William Sherman.)

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Any further questions of this witness?

Mr. Hecht: No further questions on my part.

Mr. Rowell: Well, just a minute. I thought Mr. Edises wanted to ask——

Mr. Edises: Yes, I haven't questioned the witness yet.

Trial Examiner Ruckel: I am sorry.

Q. (By Mr. Edises): Mr. Sherman, you attended the meeting of July 30, did you not?

A. I did.

Q. That was held what time of day?

A. 4:15 I believe.

Q. 4:15. That was after you had received the rejection from the Company of your demand that the Stewards be put back? A. After, you say?

Q. After? A. No, it was before.

Q. Before? That is right.

Now, what was the purpose of that meeting?

A. Well, apparently the——

Q. (Interposing): Excuse me a minute. Just a second. The meeting was held after the Stewards had been suspended, correct?

A. That is right.

Q. Now, what was the purpose of the meeting?

A. Well, the purpose of the meeting, I presume, was to see if the entire group wanted to discontinue affiliation with [265] the ILWU, I believe.

Q. At least that was the question that the spon-

(Testimony of William Sherman.)

sors at the meeting intended to put to the persons present, is that correct? A. That is right.

Mr. Edises: Now, may I see those telegrams, please?

(The documents were handed to Mr. Edises.)

Q. (By Mr. Edises): I have this telegram of July 30 here, Board's Exhibit 5, sent to the Warehouse Union, and notifying the Union that 200 employees of the Company are hereby withdrawing from the Union and refuse to be further bound by any laws, rules or regulations of the Union.

Mr. Rowell: It says, "More than 200 employees," Mr. Edises.

Mr. Edises: I am sorry. "More than 200," I assure you, it was unintentional.

Mr. Rowell: Right.

Mr. Edises: After all, it is in the record.

Q. (By Mr. Edises): Now, with that telegram in mind, Mr. Sherman, I would like to ask you when you placed your own severance of affiliation from the ILWU?

Mr. Rowell: Well, now, that is objected to as calling for the legal conclusion of the witness.

Mr. Edises: Oh, Mr. Examiner,—

Mr. Rowell (Interposing): It is possible that this witness [266] may be maintaining a suit in court under the advice of counsel that the relationship has never been severed, and is still not severed.

Mr. Edises: Oh, Mr. Examiner—

Mr. Rowell (Interposing): Because the pro-

(Testimony of William Sherman.)

ceedings of the Union by which it was attempted to be severed were illegal.

Trial Examiner Ruckel: Well, there is a telegram which refers to a severance.

Mr. Edises: Certainly.

Trial Examiner Ruckel: Now, whether it was or not I think it is proper to ask as to what time he dates that severance.

Mr. Edises: That is right. In other words, I am only asking him his own case, and I refer to the telegram because I presume, at least common sense would indicate that that would establish the date, but perhaps I am wrong. That is why I wanted to ask the witness.

The Witness: Will you repeat the question, please?

Q. (By Mr. Edises): Well, the question was: When do you consider that your affiliation with ILWU was withdrawn?

Mr. Rowell: Well, we can stipulate the facts on it, can't we? I mean, after all, they did withdraw from the ILWU as a group and attempted to choose another bargaining agent, then all this stuff came up, and the question is still [267] a matter of law as to whether they actually were kicked out by the CIO Union, whether that was legal or not. It is a matter of law rather than—we have got the facts. Why ask his conclusion on it?

Mr. Edises: Well, I don't particularly care whether I get the testimony by the witness or by stipulation. Apparently Mr. Rowell is willing to

(Testimony of William Sherman.)

stipulate that the persons included in that telegram withdrew their affiliation from the ILWU as of the date that telegram bears. That is agreeable to me.

Mr. Rowell: Well, no, I am not ready to stipulate in any such fashion. I am ready to stipulate the facts.

Mr. Edises: I am sorry I misunderstood you.

Mr. Rowell: I am ready to stipulate the facts, not the legal conclusions.

Trial Examiner Ruckel: Well, let's get it from the witness:

One of the telegrams says, "You hereby withdraw," the other says, "Have withdrawn." Both telegrams are dated the same date.

What date did you have in mind as constituting your withdrawal so far as you are concerned, whether it was effective or not, from the CIO?

The Witness: If you are referring to my particular withdrawal from the CIO, it was not the intent of the telegram [268] to segregate individuals as discontinuing affiliations with the CIO. The intent of the telegram was that we were discontinuing the bargaining agency, forming another group.

Mr. Edises: Well, now, I ask that all this testimony as to the intent of the telegram go out. The intent of the telegram is to be determined from the telegram itself. My question was not as to what the intent of the telegram was because I can read; so can the Examiner read. What I wanted to know

(Testimony of William Sherman.)

was what this witness regarded as the date of his withdrawal from the ILWU.

Mr. Royster: Well, now, there seems to be a certain ambiguity.

Mr. Edises: Well, Mr. Chairman, taking first things first, I move to strike the testimony of this witness as to the intent of the telegram on the ground the telegram speaks for itself.

Mr. Royster: Mr. Examiner, if that be true——

Trial Examiner Ruckel (interposing): Well, not necessarily. Motion denied. He can tell what the telegram means, or construe——

Mr. Hecht (interposing): May I say, Mr. Examiner, I don't particularly care in so far as this affects the intervener and the complainants, but I don't think that the respondent should be bound by whatever was the intent of Mr. Sherman or the persons who caused that telegram to be [269] sent.

Mr. Edises: My motion to strike is denied, Mr. Examiner?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Edises): Now, may I have an answer to the question, Mr. Sherman, of when you regarded your withdrawal from the ILWU as having become effective?

Mr. Rowell: Well, that is objected to. I must press this objection, Mr. Examiner, because it calls for a legal conclusion of the witness.

Trial Examiner Ruckel: No, the question was when he intended it to be effective. We are not

(Testimony of William Sherman.)

concerned whether it was or not. Perhaps he is still in there, for all I know.

Mr. Rowell: Well, all right, on that understanding I withdraw the objection.

Mr. Hecht: Mr. Examiner, before the answer is given, is it understood that none of his testimony is binding on the respondent as it cannot be bound by whatever the intent of Mr. Sherman was?

Mr. Rowell: That is not understood at all.

Trial Examiner Ruckel: It stands to reason that you are not bound by his answer.

Mr. Edises: He is not the respondent's witness.

Trial Examiner Ruckel: Rephrase your question.

Mr. Edises: All right. I will just rephrase it.

Q. (By Mr. Edises): When did you intend your withdrawal [270] from the ILWU to take effect?

A. Well, I might say that if they had intentions of throwing me out of the Union it would——

Q. (Interposing): No, just a minute, Mr. Sherman. I think the question was a simple one.

Trial Examiner Ruckel: With reference to the statement in your telegram when do you date your intention to withdraw from the Union? As of the date of the telegram or previously, or afterwards?

The Witness: I intended to withdraw from the Union when we became the recognized bargaining agent.

(Testimony of William Sherman.)

Q. (By Mr. Edises): Mr. Sherman, you sent this telegram, didn't you?

A. I did.

Q. Read it, read it aloud.

Mr. Rowell: Well, now, that is not necessary.

Mr. Edises: I submit I want to hear the witness read it aloud. It is cross-examination.

Trial Examiner Ruckel: You may read it aloud if you wish.

The Witness: I don't wish to if I have a choice.

Q. (By Mr. Edises): I will read it aloud. Will you please listen to this, Mr. Sherman?

This is to "International Warehousemen's Union, Local 6. [271]

"You are hereby notified that more than 200 employees of the Colgate-Palmolive-Peet Co., all being former members of your Union and being more than 50 per cent of such employees by action taken for such purpose, have and do hereby withdraw from your Union, sever connections and refuse to be further bound by any of the laws, rules, or regulations of the Constitution of I.L.W.U.

Signed: Employees Welfare Association.

By: Negotiating Committee,

E. H. Thompson,

W. P. Sherman."

Now, are you the W. P. Sherman referred to in this telegram? A. Right; correct.

(Testimony of William Sherman.)

Q. Yes. And did you understand the telegram as I just read it to you?

A. I think I understood it, yes.

Q. Yes. And were you playing tricks on the Union when you sent that telegram, or did you really mean it?

Mr. Rowell: Now,—

Mr. Royster (interposing): I object.

Mr. Rowell: That is an improper question.

Trial Examiner Ruckel: Objection sustained to the form of the question.

Q. (By Mr. Edises): Mr. Sherman, are any of these statements [272] contained in that telegram false?

A. (Examining document): Not to my knowledge, no.

Q. Now, Board's Exhibit 6 is the telegram sent to Colgate-Palmolive-Peet Company, Berkeley, California, stating:

"You are hereby notified of action taken by more than 200 employees of Colgate-Palmolive-Peet Co., all being former members of ILWU 1-6, and being more than 50 per cent of total employees have withdrawn and severed relations with ILWU-6 as collective bargaining agent."

Signed: "Employees Welfare Association, by Negotiating Committee, E. H. Thompson, William Sherman——"

You are the William Sherman referred to in this telegram? A. Yes.

(Testimony of William Sherman.)

Q. And you sent this telegram on or about the date it bears, did you not? A. Right.

Q. Is there any statement in this telegram which is false? A. Not to my knowledge, no.

Q. Now, Mr. Sherman, you were one of those who waited on the Company and endeavored to get the Stewards back to work? A. Right.

Q. And following that the employees walked off the job? A. Correct.

Q. Following your failure to get them back?

A. Following that the work ceased at 12 o'clock, such as it [273] always has.

Q. Yes. Now, I would like to have you explain the circumstances of that cessation of work. What did you have to do with bringing it about, how did you go about it?

A. About the cessation of work?

Q. Yes. Now, I don't want to confuse you. There was a 21½-day stoppage of work, wasn't there? A. Right.

Q. Now, I would like to have you tell me just how that was accomplished in so far as you know?

A. As far as I know it was accomplished by a meeting that the employees chose to attend at 12 o'clock, and never returned.

Q. Well, what event preceded this continuous meeting which, so to speak, precipitated the meeting? In other words, there must have been some sign which led the employees to go out. Now, what was that, how was that determined?

A. There was no sign. You read the minutes of

(Testimony of William Sherman.)

the preceding meeting. The next step would be another meeting to find out what was to be done, to report what we had to say to these people as a result of our meeting with Railey.

Q. Well, now, after you left Mr. Railey's office, Mr. Sherman, you went back into the plant, didn't you?

A. We went back to Mr. Smith's office and were addressed again by Mr. Railey. [274]

Q. And then what did you do about notifying the employees that they were to go out?

A. I informed several employees that there was a meeting at noon.

Q. That was the continuous meeting, so-called; right?

A. That was the one that resulted in a continuous meeting, yes.

Q. Yes. How many employees did you so notify? A. Well, I am sorry; I don't remember.

Q. Well, roughly?

A. Oh, I would say perhaps one or so in each department.

Q. Well, now, what arrangement had you made? What arrangements had you agreed on with the other members of the committee about communicating to the employees the failure of your mission with Mr. Railey?

A. There was no arrangement made.

Q. Well, isn't it a fact that in some way the employees had to be notified that you had not suc-

(Testimony of William Sherman.)

ceeded so that they could take the action that had previously been agreed on?

A. I think they felt that we would come and tell them what action, regardless of whether it was in the plant or otherwise.

Q. Well, it is a fact, isn't it, that the employees were notified that the Stewards were not going to be put back to work? [275]

A. Certain employees were, yes.

Q. Well, you say "certain employees were"?

A. Right.

Q. Did you tell those employees to spread the word around to the others?

A. No, I don't think we did. We presumed that they probably would.

Q. Well, you were concerned to get as many employees out as you could, were you not?

A. Not necessarily, no.

Q. Oh, now, Mr. Sherman, are you testifying that you were not interested in getting—that you didn't care how many employees walked out in support of the Stewards?

A. No, I can't say that I particularly cared how many walked out in support of the Stewards, if you use that term.

Q. In other words, it was immaterial to you whether one walked out or 250 walked out? Is that what your testimony is?

A. I believe I can say it was immaterial.

Q. You didn't care, in other words, whether one walked out or 300 walked out? A. No.

(Testimony of William Sherman.)

Q. Uh huh. Now, after this—well, may I ask this: Were you surprised when some 250 walked out? A. I was, yes. [276]

Q. You didn't really think that any would walk out, did you?

A. I think, Mr. Edises—I don't know if this is an answer to your question or not; you know yourself how difficult it is to get people to a meeting, and especially during wartime. My surprise was that so many people was willing to attend the meeting.

Q. Of course, the fact is you did everything you could to get them to attend, did you not?

Mr. Rowell: That is objected to.

Trial Examiner Ruckel: You may answer.

A. I did everything I could to get them to attend, I notified everybody and left it to their own judgment.

Q. (By Mr. Edises): Yes. Now, after the stoppage began, I presume—I gathered from the testimony of Mr. Lonnberg that there was some kind of coordination of events, some kind of—I think I referred to it as a Strategy Committee, and he accepted that terminology. But was there some kind of coordination of the walkout?

Mr. Rowell: The terminology of counsel there is different from that of the witness. I merely make that observation.

The Witness: Will you repeat that?

Q. (By Mr. Edises): What was done to direct

(Testimony of William Sherman.)

and control and coordinate the employees on—I won't say the strike, [277] but in the walkout?

A. Well, the only thing that I can say to that is what has been testified to already, is that there was a contact committee set up to keep each other informed, and this group was to keep others informed. I believe that was the thing.

Q. What I am interested in is the direction of the thing. In other words, you had several of these continuous meetings, did you not? A. Right.

Q. And I presume you kept your people advised about the progress of events?

A. Probably did.

Q. And there had to be some way of deciding when you were going to go back and so on; that is true, isn't it? A. Correct.

Q. Now, Mr. Lonnberg testified that the group which assumed charge of directing this thing was the Committee of Four, plus the five Stewards, plus certain other persons whom he asked not to be required to name, and I didn't press him to name those persons, and I am not going to press you to name them. But I would like to know just what this Coordinating Committee did. I presume it must have done something with its time during this two and a half days, and I would like to know just what it did?

A. Well, of course, we were shopping around for a union [278] with a strong international. What I done mostly was to go shopping, so to speak, to

(Testimony of William Sherman.)

find out the satisfactory union to represent us.

Q. What else did you do?

A. Well, I presume I answered numerous phone calls from various people, wanting to know how things were progressing, and that is about all.

Q. The matter of the morale of the people out on strike, did you do anything about that? Did you visit them, for example, at their homes?

A. No, I don't think outside of Thompson that I did visit—Thompson and Lincoln Olsen, I don't think I visited any of them.

Q. Now, going back for a moment to the time of your visit to Mr. Railey to try to get the Stewards back, did you tell Mr. Railey of the action that the membership had taken, the resolution?

A. I think that a good part of the conversation centered on trying to persuade Mr. Railey to put the five Stewards to work outside the bargaining unit of the union.

Q. My question was whether you informed Mr. Railey of the resolution that the membership had adopted in regard to these five Stewards.

A. I don't think we gave him the exact words. I think that we requested in every manner that we knew to get the Stewards [279] back.

Q. Well, did you give him the substance of the resolution even though, perhaps, not the exact words?

A. We didn't threaten "no strike," if that is what you mean.

Q. Well, I am not asking you whether you

(Testimony of William Sherman.)

threatened a strike. Mr. Railey was informed, was he not, that the membership had given you authority, or the membership had——

A. (Interposing): Authorized?

Q. Let's not put it that way. ——had resolved that it was not going to return to work unless the Stewards returned to work?

A. Well, I don't think we did, frankly. I don't recall. It has been a long time ago.

Q. Well, now, you don't recall whether that was actually stated or not? A. No.

Q. That meeting had been an open meeting, hadn't it? All employees were entitled to be present? A. The meeting of the 30th?

Q. Yes. A. Yes.

Q. As a matter of fact, I believe some one of your colleagues testified that Mr. Railey was there when the membership took the vote?

A. He was. [280]

Q. So he would, of course, know?

A. That is right.

Q. Of the position of the members?

Mr. Rowell: Which would render it unnecessary for this Committee to advise him, Mr. Edises.

Mr. Edises: I do not care to engage in——

Trial Examiner Ruckel (interposing): The witness has answered.

Q. (By Mr. Edises): Mr. Sherman, I show you Respondent's Exhibit No. 15.

That is a sample ballot, and on the rear of the

(Testimony of William Sherman.)

ballot there are a number of pictures. You are included in one of these pictures, are you not?

A. Right.

Q. And the arrow that I draw represents you, does it not? A. Right.

Mr. Edises: Now, I will just, with the Examiner's permission, write "Sherman."

Trial Examiner Ruckel: Is there any objection?

Mr. Hecht: None.

Mr. Royster: No objection.

Mr. Rowell: Let me see it a moment, will you?

(The document was handed to Mr. Rowell.)

Mr. Rowell (examining document): No objection.

Q. (By Mr. Edises): Now, Mr. Sherman, did you have anything [281] at all to do with the preparation of these leaflets which are entitled "Progress Reports"? A. In what manner?

Q. Anything to do with their preparation? Did you help to write any of them, or edit any of them, or suggest the contents of any of them?

Mr. Rowell: I think that is immaterial, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

A. Oh, I suppose I wrote some of the material that was used. However, I never directly wrote any of them.

Q. (By Mr. Edises): Yes. Can you identify any particular parts that——

(Testimony of William Sherman.)

A. (Interposing): I would rather not, because it would take time. I would have to go over them word for word, and I am not going to identify anything that I can't recall.

Q. No, I don't want you to identify anything you can't recall. I was just wondering if by glancing at some of the passages you might recall the authorship?

Mr. Rowell: He has testified that he participated in the preparation of some portions of those things. It is certainly not important to show which paragraphs he happened to dictate.

Trial Examiner Ruckel: Is that important?

Mr. Edises: I will pass that.

Q. (By Mr. Edises): Mr. Sherman, was there a publicity committee [282] or a leaflet committee of some kind that worked in the preparation of some of these leaflets?

A. I think—no, there was no particular designated committee, I believe.

Q. No designated committee? A. No.

Q. In general, would it be fair to say that the four committeemen and the five Stewards participated in the work of preparing these leaflets?

A. I really don't think that the five Stewards had anything to do with the preparation. Well, yes, one of them—that is, not the preparation, but something to do with the preparation of them, or something. I don't know.

Q. What?

(Testimony of William Sherman.)

A. Dave Luchsinger had more to do with that.

Q. With what?

A. With the carrying of them to the office, to the place where they were mimeographed, and so on.

Q. I am not referring to the physical preparation. I mean working on the contents, drafting them, and so on. Did any of the Stewards have anything to do with that?

A. I don't believe they did.

Q. How about the Committee of Four?

A. I don't think anybody outside of, maybe, one, had anything to do with the writing. However, I can't answer that. [283]

Q. And who was that one?

A. I think Thompson compiled some material that was not used.

Q. But these were the collective responsibility of all of the four on the committee, or the nine, or just——

A. (Interposing): It was not a laid out plan.

Q. It was not a laid out plan?

A. It was a random thing.

Q. But you never attempted in any way to deny that responsibility or authorship for these, that is, the A F of L did not?

A. I certainly deny authorship of those, yes.

Q. No, I mean the point I am making is there is no question that these were the official bulletins of your organization?

A. No question.

Mr. Rowell: He has already testified to that.

(Testimony of William Sherman.)

Q. (By Mr. Edises): Did you generally, Mr. Sherman, know the contents of these bulletins before they were distributed?

A. Some of them, and some of them not.

Q. Some of them you did and some of them you did not? A. Yes.

Q. Did you ever disassociate yourself in any way from any of the views or opinions expressed in these bulletins?

Mr. Royster: I will object to that, as to its materiality. [284]

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Mr. Sherman, you were at one time Business Agent of the ILWU Local 6, were you not? A. Right.

Q. And under what circumstances did you cease to be a Business Agent?

Mr. Royster: I will object to the materiality again.

Trial Examiner Ruckel: He may answer.

A. I lost the election.

Q. (By Mr. Edises): You lost the election when?

A. Oh, I don't recall the month. I lost it in 1943, I believe, the latter part of 1943.

Mr. Edises: I think that is all.

Trial Examiner Ruckel: Any further questions by the Board?

(Testimony of William Sherman.)

Redirect Examination

By Mr. Rowell:

Q. Mr. Sherman, I believe you testified that the purpose of the meeting of July 30, to boil it down to a few words, was to see if the group wanted to discontinue with the ILWU as the bargaining representative? A. That is right.

Q. Did you have the advice of a lawyer in connection with how that was to be done?

A. Not at the time of the meeting, it was following the [285] meeting.

Mr. Edises: Well, now, I object to that as incompetent, irrelevant, and immaterial. What difference does it make?

Mr. Rowell: The question has already been answered.

Mr. Edises: Well, then, I move to strike, Mr. Examiner.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Rowell): Your purpose was to arrange a switch in the bargaining agent through the appropriate legal processes, is that correct?

Mr. Edises: Now, just a moment. I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: I was not permitted to ask questions along that line.

Q. (By Mr. Rowell): In regard to these telegrams, Board's Exhibits 5 and 6, did you have the

(Testimony of William Sherman.)

advice of a lawyer in connection with the preparation of those telegrams?

Mr. Edises: Same objection.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): Now, you testified as to the number of people that were at the July 30 meeting. I believe you said there was between 270 and 275.

Mr. Hecht: I beg your pardon. I don't mean to impute anything, but I think he testified that somebody told him that that number of people were there. [286]

Trial Examiner Ruckel: Well, it has been testified as a substantial majority. Isn't that satisfactory?

Mr. Rowell: No, your Honor, I don't think it is.

Mr. Edises: Even stipulated.

Mr. Rowell: I think if there were 270 out of 300 employees there that is immaterial, I would have let it stand, as it were, if Mr. Hecht hadn't considered it material to try and cut down the force of——

Trial Examiner Ruckel (interposing): Let's leave it. It doesn't make a particle of difference as far as this case goes whether it was one more than a majority, or 50 more than a majority.

I thought you were all satisfied with that yesterday?

Mr. Edises: We stipulated to it.

Mr. Rowell: I was satisfied until Mr. Hecht

(Testimony of William Sherman.)

tried to cut down the force of the testimony of the witness.

Mr. Hecht: I just wanted to know how he knew.

Mr. Rowell: Well, I want to ask one more question if the objection to it is sustained.

Q. (By Mr. Rowell): I will ask you, Mr. Sherman, as to whether the number of people present at the July 31 meeting was approximately the same as the number present at the July 30 meeting, or only slightly less.

A. I think that there was—it was about the same, if I recall. [287]

Mr. Rowell: I have no further questions.

Mr. Hecht: I have two more questions, I believe.

Recross-Examination

By Mr. Hecht:

Q. Under examination by Mr. Edises, Mr. Sherman, you started to say that the ILWU was about to throw you out? Or did I misunderstand you?

A. You misunderstood me.

Q. What were you going to say? Will you complete that statement?

Mr. Edises: It seems to me, if I may interpose here, the questions is so general it really calls for this witness to just volunteer whatever happens to come into his head.

Mr. Hecht: Well, I won't pursue it. That is all right.

(Testimony of William Sherman.)

May I have the exhibits which is the minutes of the meeting of July 30?

Mr. Royer: It is Intervener's 2.

(The document was handed to Mr. Hecht.)

Q. (By Mr. Hecht): Mr. Sherman, you testified that Mr. Railey was present at the time that the following motion was adopted, and I am reading from the minutes:

"Motion that we go back tomorrow morning pending settlement of Five Brothers Shop Stewards laid off by management at request of I.L.W.U. officials. If Shop Stewards don't work, nobody works. Carried unanimously."

Was Mr. Railey present when that resolution was [288] adopted?

A. There is either a misunderstanding there on our part, or my part. I don't believe he was there when that was adopted, that resolution.

Mr. Rowell: Maybe we had a mix-up. I think we will stipulate Mr. Railey was not at that July 30 meeting, as a matter of fact.

Isn't that correct?

Mr. Royster: That is my understanding.

Mr. Hecht: It was testified under examination by Mr. Edises that Mr. Railey was present when the resolution for the work stoppage was adopted.

Mr. Rowell: Well, let's clear up the confusion, if you wish, just by stipulation.

Mr. Hecht: Yes, it is stipulated that he was not there.

(Testimony of William Sherman.)

Mr. Rowell: That is right.

Mr. Royster: Agreed.

Mr. Hecht: No further questions.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: None.

(Witness excused.)

Now, Mr. Examiner, I have Edwin Thompson and Dave Luchsinger present in the hearing room. Mr. Luchsinger was a Steward. Mr. Edwin Thompson was a member of the Negotiating Committee who sought the reinstatement of the [289] Stewards. They can testify to nothing except what has already been covered by other witnesses. However, they are present in the hearing room, and I offer them for the examination of any of the parties.

Trial Examiner Ruckel: Well, if they can't tell us anything additional, let us dispense with them.

Mr. Edises: I would simply ask a couple of things that I would like to establish from them, and, incidentally, I forgot to ask those things of Mr. Sherman.

Mr. Rowell: Let's recall Mr. Sherman then.

Trial Examiner Ruckel: Now, we are in this position. The Board has indicated it doesn't care to call them as its witnesses. Now, you have indicated if they were called you might be able to utilize some part of their testimony.

Let's take a brief recess and see if we can't stipulate. Recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Mr. Edises: The statement was made by counsel for the Board that he did not intend to call a couple of additional witnesses, and I stated that there were a couple of things I wanted to bring out, and we have now reached a stipulation which will eliminate the necessity of calling these witnesses.

Mr. Royster: Will you name the witnesses?

Mr. Edises: They are David Luchsinger, Edwin Thompson, Sanford Moreau, and Clyde Haynes.

Off the record.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: All right, this is limited to these four: the ILWU throughout the period World War II had bound itself and its membership to *reframe* from any strike activity during the war in the following terms: No, in substantially the following terms: A pledge to President Harry S. Truman and the nation: "On behalf of the entire membership of the International Longshoremen's & Warehousemen's Union we renew and give to President Harry S. Truman and the nation our solemn pledge that until the war is ended, with the unconditional surrender of Japan, we will not strike, stop work, or cease or slow production for any reason whatsoever.

"We reiterate that this is an unconditional pledge given in the knowledge that our first duty is

to our nation, and that despite provocation we must take no action that will imperil our nation or cause the prolongation of the war, or cause the unnecessary loss of so much as one Allied life.

“We further make the positive pledge that we will do everything in our power to shorten the war by lending [291] ourselves to intelligent solution of the manifold manpower problems and to the development of all possible means to speed production.”

This resolution was adopted unanimously June 29, 1945, by the ILWU Executive Board, and in substance is the same resolution which was the official policy of the Union throughout the entire war period.

It is stipulated between the parties to this proceeding that the four individuals just named had knowledge of this no-strike pledge at the time of the events referred to in the complaint.

Mr. Royster: So stipulated for the Board.

Mr. Rowell: So stipulated.

Mr. Hecht: So stipulated.

Mr. Royster and Mr. Rowell, I think so time ago you asked me for a stipulation with reference to the number of employees at the plant on July 30, 1945.

Mr. Rowell: Yes.

Mr. Hecht: At that time there were 313 employees.

Trial Examiner Ruckel: 313?

Mr. Hecht: 313 employees, including Assistant

Foremen but not Foremen, and not including 7 service men who were working there part time.

Mr. Royster: In other words, Mr. Hecht, the 313 were those included within the bargaining unit represented under [292] the contract by the ILWU?

Mr. Hecht: Well, I wouldn't want to go that far because we have, I think, one or two foremen who, despite their positions as foremen, are also Union members and are, apparently, represented by the ILWU. As a matter of fact, Mr. Wood has just informed me that we only know of one foreman who is a Union member that we are sure of.

Mr. Royster: Well, of course, we are confusing union membership here with inclusion in a bargaining unit. I don't know that this is any time to discuss that anyway.

Mr. Hecht: Well, isn't it sufficient for your purposes, though, the fact that there were 313?

Mr. Royster: Yes, it is.

Mr. Rowell: I think it is sufficient. We will accept the stipulation.

Mr. Royster: Accepted for the Board.

Mr. Edises: May I ask whether the parties will include Mr. Sherman in the stipulation just made as to knowledge of the no-strike pledge?

Mr. Rowell: Yes, we will include him in the stipulation.

Mr. Royster: We will include him.

Mr. Hecht: Another stipulation that may save time in the examination of the witnesses of the respondent, Mr. Royster, will it be stipulated that

the respondent was at the time that these events related in the complaint took [293] place engaged in the manufacture of glycerin, a product necessary to the conduct of the war?

Mr. Royster: I wonder if you would be willing to add to that stipulation that none of the employees who were working on any of the processes or on the glycerin processes were discharged, or sought to be suspended from membership by the ILWU?

Mr. Edises: I don't think that we could agree to any such stipulation because our information is that there was a substantial curtailment of production of war materials as a consequence of the walk-out.

Mr. Rowell: Well, the walkout is different than this last point.

Mr. Hecht: May we go off the record?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Let the record note that there was no stipulation reached on the latter point.

Anything further?

Mr. Royster: Now, Mr. Hecht, I am not quite certain whether you had any question to pose to Mr. Luchsinger or not.

Mr. Hecht: Yes, of limited scope. I only want to refer him to his visit to the plant on August 5, 1945. [294]

Mr. Royster: All right, Mr. Luchsinger.

Mr. Hecht: And this will be considered cross-examination?

Mr. Royster: Oh, that is agreeable to me.

DAVE LUCHSINGER,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address for the record, Mr. Luchsinger?

A. Dave Luchsinger, 434 65th Street, Oakland.

Mr. Royster: The Board has no questions of Mr. Luchsinger.

Mr. Hecht: All right.

Cross-Examination

By Mr. Hecht:

Q. Mr. Luchsinger, it has been testified that you, in the company of Mr. Harvey and Mr. Harold Lonnberg, visited the Colgate Plant on August 25, 1945.

A. That is right, on or about that date.

Q. Yes. At that time you were not an employee of the company?

(Testimony of Dave Luchsinger.)

A. I was not working there at the time.

Q. Yes. Did you register at the gate before entering the plant? [295]

A. No, I did not. I talked to the watchman at the gate and he said to go right in.

Q. What did you say to the watchman at the gate?

A. Well, we walked out—we got out of the machine across the street, and we walked over to the watchman, and he was in the cabin there, a little doghouse, they call it, and we talked to him a while. I don't know just what words were spoken, and he said for us to go right in.

Q. Do you know whether the watchman knew that you were no longer working at the plant?

A. That I couldn't say, whether he knew. I think he knew we were out, but he didn't know whether—what else was—whether we were coming back or what.

Q. Did you have your badge on?

A. What badge?

Q. Your workman's badge, the one that was worn at Colgate?

A. I never had a badge. I never did walk in there with a badge. I ain't got one. I never did have one since I worked there.

Q. You never wore a badge?

A. I never wore one.

Q. Now, do you know of a certain sign that is over the gate, or near the gate?

A. I don't know. The gates were both wide open

(Testimony of Dave Luchsinger.)

when we walked in. I don't know if there was a sign on them or not. [296]

Q. It is on the side of the gate as you go in, Mr. Luchsinger?

A. I didn't look at the side. I didn't notice any sign at the gate.

Q. How many years had you been working at Colgate-Peet? A. A little over nine years.

Q. Mr. Luchsinger, the sign I have reference to reads as follows:

"By order of the United States Government, all persons entering this plant must register."

Have you ever seen such a sign?

A. Not to my knowledge. There might be one there, but I never—I don't know what it says there.

Q. All right. Mr. Luchsinger, will you tell me if you have any information on the subject, whether before or after August 25, 1945, you ever asked any executive or agent of the company for permission to enter the plant for the purposes of doing work on behalf of the AF of L?

The Witness: I didn't get that question.

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the reporter.)

A. No, I haven't.

Q. (By Mr. Hecht): The answer is "No"?

A. "No."

Mr. Hecht: Off the record for a moment.

Trial Examiner Ruckel: Off the record.

(Testimony of Dave Luchsinger.)

(Remarks outside the record.) [297]

Trial Examiner Ruckel: On the record.

Mr. Hecht: It is stipulated by and between counsel for the Board, for the complainants, counsel for the intervener, and counsel for the respondent, that the witness and complainant, Mr. Luchsinger, if asked the same questions with reference to his application for reemployment at the plant, and with reference to the collective bargaining agreement dated July 9, 1945, would testify substantially in the same manner as have other witnesses, such as Mr. Sherman, Lonnberg, Marshall, and Olsen.

Mr. Royster: So stipulated by the Board, with a reservation, however, as to the materiality of such questions and the answers elicited.

Mr. Hecht: Very well.

Mr. Edises: So stipulated.

Mr. Rowell: Stipulated with the same reservations.

Mr. Hecht: Will that stipulation also go, Mr. Royster, to Mr. Haynes, Mr. Thompson, and who was the other man?

Mr. Royster: Moreau.

Mr. Hecht: And Moreau?

Mr. Royster: Yes, with the same reservation.

Mr. Rowell: Yes, likewise with the same reservation.

Mr. Edises: So stipulated.

Mr. Hecht: Very well.

Trial Examiner Ruckel: Anything further of the witness [298] then?

(Testimony of Dave Luchsinger.)

Mr. Rowell: Yes, I wanted to ask a question or two.

Redirect Examination

By Mr. Rowell:

Q. On August 25 when you went to the plant you talked with Mr. Carter there, isn't that right?

A. That is right.

Q. What did Mr. Carter tell you to do?

A. He told us we had to leave the plant.

Q. Did he tell you why?

A. Well, he says, "You are no longer employed here. You will have to get out," and he said he was—Mr. Altman and nobody was there, and he was taking over to see that we got out.

Q. Did he know what you were doing so far as activities on behalf of the AF of L?

A. I imagine he did; I imagine he did.

Mr. Hecht: I move to strike what the witness imagined.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Rowell): Had you asked him why Gleichman and Harrison were allowed to stay there on behalf of the CIO?

A. I didn't myself. I think Mr. Howard did.

Q. Yes. What was his answer to that?

A. Well, he says, "They are representing a union," that is what he thought they were, but he was going to go and find out whether they were or not. [299]

Q. Did Mr. Carter at any time tell you the

(Testimony of Dave Luchsinger.)

reason you had to leave was because you had not registered with the watchman when you came in?

A. No, he didn't say that. If he said that I never heard him say it to none of us.

Q. Do you remember him making any mention of registering with the watchman, or anything?

A. No.

Q. Did you ever register with the watchman at any other time when you went into the plant?

A. No, as long——

Mr. Hecht: It is not contended, Mr. Rowell, that employees have to register.

Q. (By Mr. Rowell): By the way, your status at the time, so far as you know, was that of an employee, or a suspended employee, or a discharged employee? Do you know?

A. (No response.)

Q. I am asking for your legal conclusion, I must admit.

A. I didn't get you.

Q. Do you know whether you, at the time of August 25 when you went to the plant, whether you were an employee, or a suspended employee, or a discharged employee?

Mr. Edises: Now, one moment. We will adopt Mr. Rowell's objection to that question.

Trial Examiner Ruckel: I will sustain counsel's objection. [300]

Mr. Rowell: No further questions.

Mr. Hecht: No further questions.

Mr. Royster: That is all.

Mr. Edises: I have no questions.

(Testimony of Dave Luchsinger.)

Mr. Hecht: Pardon me. I did want one more question.

Recross-Examination

By Mr. Hecht:

Q. Mr. Luchsinger, you were here present when these exhibits, these pamphlets, these Progress Reports were identified by Mr. Sherman?

A. I was sitting in.

Q. Yes. Did you have anything to do with supplying material for the editing of these Progress Reports? A. I did not.

Q. Did you have anything to do with the distribution of these reports?

A. I did some of them.

Q. Could you tell us how you distributed some?

A. I distributed some to the workers that worked in the plant that is out now, what got suspended on September 1.

Q. Yes. Did you distribute them by going to the gate and giving them to the men as they came out? A. No, I did not.

Q. Where did you distribute them?

A. I took them out to this fellow's home, where he lives.

Q. Did you have a mailing list? [301]

Mr. Rowell: That is immaterial, your Honor. The only question is whether they succeeded in distributing them at the plant.

Mr. Hecht: It is preliminary.

Trial Examiner Ruckel: You may answer.

(Testimony of Dave Luchsinger.)

A. Well, they did have a main list at the office down there. I think they did mail some of them out. I didn't have nothing to do with it.

Q. (By Mr. Hecht): You don't know how many names were in the mailing list, for instance?

A. I do not.

Q. Do you know whether anybody else distributed these leaflets in and about the plant?

A. Not to my knowledge, I don't.

Q. You don't know of anybody taking them to the plant? A. No.

Mr. Hecht: That is all.

Mr. Edises: Oh, just one thing.

Q. (By Mr. Edises): Mr. Luchsinger, were you present at the meeting of July 30 at the Finnish Brotherhood Hall? A. I was.

Q. And did you concur in the following motion: "Motion by Thompson that we withdraw from the C.I.O. and International Longshoremen and Warehousemen's Union, District No. 1, Local 6, form an independent union and seek affiliation [302] with another International. Motion seconded. Vote carried unanimously, in favor 205; opposed, none?"

A. I did.

Mr. Edises: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Henry Hellbaum.

HENRY HELLBAUM,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address for the record, Mr. Hellbaum?

A. Henry Hellbaum is my name, and I now live at 944 Key Route Boulevard, Albany. That is a different address than you have there. I have moved since.

Q. What is your occupation now, Mr. Hellbaum?

A. General contractor and builder.

Q. You were employed by the respondent, were you not?

A. Yes.

Q. And for what period?

A. From about May 20, 1933, until August 31, '45. [303]

Mr. Hecht: May we go off the record just a moment, Mr. Examiner?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): Were you a member of ILWU?

A. Yes.

Q. For how long?

A. From the time we were switched in there. I don't remember the exact date.

(Testimony of Henry Hellbaum.)

Q. Until the time you left the employment of the company?

A. That is right; that is correct.

Q. Did you become a member of the AF of L?

A. Yes.

Q. And do you recall about when that took place?

A. No, I don't. It was some time around August 30.

Q. Did you participate with other employees in a continuous meeting starting on July 31?

A. I did.

Trial Examiner Ruckel: We will recess for a couple of minutes.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): With reference to this continuous meeting, when did you join the AF of L?

A. Well, it must have been some time prior—just a day or two prior to this meeting; possibly three or four days. I just don't remember.

Q. Was it about the time of the meeting?

A. About that time.

Q. Now, did you wear an AF of L button in the plant? A. I did.

Q. Did you wear it on your working clothes in plain sight? A. Yes.

Q. Did you distribute any literature for the AF of L? A. Yes.

(Testimony of Henry Hellbaum.)

Q. Did you solicit others to join the AF of L?

A. Yes, I did.

Q. Did you distribute any buttons to other employees?

A. I think I did, a few.

Q. Did you have a conversation with Mr. Wood?

A. Yes, sir.

Q. Along about the 8th of August?

A. Yes, sir.

Q. And where did this conversation take place?

A. In the "T.A. Warehouse."

Q. Is that the Toilet Articles Warehouse?

Mr. Hecht: I didn't hear that.

Q. (By Mr. Royster): Is that the Toilet Articles Warehouse? [305]

A. Yes, that is right.

Q. Was anyone present other than you and Mr. Wood when this conversation took place?

A. Well, there were people close.

Q. Within hearing?

A. Yes.

Q. Were those that were within hearing other employees in that department?

A. That is right.

Q. Can you name any of them who were within hearing?

A. Well, Ann Nicoletti was the girl's name that took the money at the window.

Q. Nicoletti?

Trial Examiner Ruckel: Is Nicoletti her name?

Q. (By Mr. Royster): Was it Ann Nicoletti?

A. That is who it would be, yes.

Q. Well, was it Ann Nicoletti?

A. Yes.

(Testimony of Henry Hellbaum.)

Trial Examiner Ruckel: Well, do you think she was in a position to hear what was said between you and Mr. Wood?

The Witness: Well, I wouldn't say as to that.

Q. (By Mr. Royster): What was the conversation?

A. Mr. Wood came to me and asked me if I was Henry Hellbaum. I said, "Yes," and he stated it had been brought to his attention that I was soliciting, or words to that [306] effect, in the interests of the AF of L, and he said since the company was supposed to be neutral he wished I wouldn't do that any more.

Q. Did you make any reply to that?

A. I said, "O.K."

Q. Now, did you have a conversation with Charles Grube about the 9th of August, 1945?

A. Yes.

Mr. Hecht: May I ask this one question off the record, please?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): Where did this conversation take place?

A. In the basement of "A" Building, I believe. It is down where they make Crystal White Soap.

Q. Who was present other than Mr. Grube and you?

A. Well, Ed Bopp was present, and one man

(Testimony of Henry Hellbaum.)

who has since been named to me as a man by the name of Cunha and Andy Matson, and a *name* by the name of Beck. I don't know his first name—and a fellow that we call Frenchie Valla, I think is his last name.

Q. Would you have any idea how to spell that last name? A. V-a-l-l-a, I believe. [307]

Q. What was that conversation, what you said to Grube, if you said anything, and what he said to you?

A. I asked Grube if it was so that he had told these three men, Valla, Beck, and Andy Matson, that he would send them home if they didn't take the AF of L buttons off their clothes? And he gave me an evasive answer, and he said that I couldn't come into his department any more. I said, "Is that so?" He said, "Yes, you hinder my men, you are hindering my men from working." I said, "I am not talking to your men, I am talking to you. I am asking you a straightforward question. I want to know, "Did you do this?" He said, "*Your* damned right I did; I am not beating about the bush to anyone about it."

Mr. Hecht: Mr. Royster, before I make my motion, I will avoid making my motion if you will ask Mr. Hellbaum who told him that Charlie Grube had done these things.

Mr. Royster: Well, I was not going to ask the witness that because I assumed that is purely hearsay.

(Testimony of Henry Hellbaum.)

Mr. Hecht: Hearsay is admissible here. We have had even quintuple hearsay as far as——

Mr. Royster (interposing): You can ask him that question on your examination, Mr. Hecht.

Mr. Hecht: Then I move to strike that conversation with Grube because Mr. Hellbaum posed first the assumption that somebody had told him that Charlie Grube had said [308] something, whereupon he goes to Charlie Grube and inquires about the truth of it.

Trial Examiner Ruckel: It is what Mr. Grube says that is the crux of the matter. He said, to the effect, that he had told him that and would continue to do so, and words to that effect.

Isn't that the substance of Grube's answer as testified to by this witness?

Mr. Hecht: Well, I don't think it becomes material unless Grube actually did tell somebody else.

Trial Examiner Ruckel: On the contrary, I think it is immaterial what this witness heard. The only material thing is what Grube said.

Mr. Hecht: Well, it is same thing as if somebody were to ask me, "Have you swum the Golden Gate?" Actually I didn't swim the Golden Gate. I said, "Sure, and I will swim the Golden Gate any time I want."

Trial Examiner Ruckel: Well, rather it is this type of testimony: A foreman says that the Superintendent said to him that he was not going to permit any Union activity in the plant. Now, in fact, the Superintendent said no such thing, but the

(Testimony of Henry Hellbaum.)

statement in the mouth of the Foreman that the Superintendent did is intimidatory even though in fact the Superintendent did not.

Mr. Hecht: Is this a hypothetical case we are referring [309] to, some Superintendent of the respondent?

Trial Examiner Ruckel: No, not of the respondent at all. I was merely trying to draw a parallel with this, where it is not the truth or falsity of the purported statement that is in question but the lower supervisor's statement that the higher supervisor did, even though the statement was false. In other words, the repetition of it in the mouth of the lower supervisor. Well, here we don't know that. Here, while the original testimony is hearsay, it becomes the answer of the foreman himself, becomes material, which was that, "Yes, I did say that in effect." Probably both parallels are a little unparalleled in places.

Mr. Hecht: Well, may I have a formal ruling, then, on the motion to strike?

Trial Examiner Ruckel: Motion denied.

Q. (By Mr. Royster): Do you know Mr. Duarte? A. Yes.

Q. Do you know Mr. Gonick? A. Yes.

Q. Did you see either of these men in the respondent's plant during the month of August?

A. I did.

Q. How frequently?

A. Oh, quite often. However, I don't know just

(Testimony of Henry Hellbaum.)

how frequently. It varied so but they were there a number of [310] times.

Q. And what, if anything, did you see them do?

A. I saw them distribute some literature.

Q. What kind of literature? I mean, was it AF of L literature?

A. No, it was definitely CIO literature. They were also collecting dues at times.

Q. Now, did you come to the plant on the 31st day of August? A. I believe I did.

Q. And about what time of day?

A. About 7:30. Perhaps a little earlier.

Q. Did you enter the plant at that time?

A. No, I did not.

Q. And why were you prevented from entering?

A. I was stopped at the gateway by a number of men.

Q. Can you name anyone who stopped you?

A. Paul Heide was closest to me.

Q. And did he speak to you? A. Yes.

Q. What did he say?

A. He said I couldn't go in there.

Q. Did he tell you why he couldn't go in?

A. No, he didn't. He just wanted to see my book, and I handed it to him, and he didn't look at it. He asked my [311] name and I told him, "Henry Hellbaum." And he said that—oh, he asked for a letter that someone had for me, and when they produced the letter he handed it to me.

Q. Do you have that letter with you?

A. No, I don't.

(Testimony of Henry Hellbaum.)

Mr. Hecht: Mr. Examiner, at this point I will make a motion to strike the incident of August 31, his being stopped at the gate by Paul Heide, because there was no one representing the respondent present, and it cannot be in any way material to this proceeding.

Mr. Royster: You are too impatient, Mr. Hecht. If you would permit me to go on for a moment I will bring it to the respondent's knowledge.

Mr. Hecht: Oh, is that a preliminary question?

Q. (By Mr. Royster): Now, did you succeed in entering the plant on this day? A. Yes.

Q. And did you talk to Mr. Altman?

A. I did.

Q. And what was your conversation with Mr. Altman?

A. I asked Mr. Altman if he had given those men permission to keep us from entering their property, and he said, "Oh, that was immaterial, that was just a technicality."

Mr. Hecht: Just a moment.

I am going to move to strike this again. Mr. Altman [312] or no one else has control of the people outside the plant. Whatever Mr. Altman said to Mr. Hellbaum as to the rights of the parties outside of the premises of the respondent is not material to this proceeding, and I move to strike it.

Mr. Royster: Well, whether that be so or not the fact is, as the witness testified, that he was prevented from entering his place of employment where he had been coming for twelve years, and he brought

(Testimony of Henry Hellbaum.)

that to the attention of Mr. Altman, and this is what Mr. Altman told him.

Mr. Hecht: The respondent cannot be expected to police what happens outside of the plant, and I think the whole testimony is incompetent, irrelevant, and immaterial, and I move to strike it.

Mr. Ruckel: Well, did this happen outside the plant?

Mr. Hecht: It did.

Mr. Royster: It happened at the plant gate. The witness so testified.

The Witness: It happened inside, speaking to Mr. Altman. I was on the platform, the loading platform.

Trial Examiner Ruckel: But you were prevented from entering the plant gate?

The Witness: Yes.

Mr. Hecht: If he was prevented from entering the plant gate, what does that have to do with the respondent, if it was told to Mr. Altman or not. It is not material. [313]

Trial Examiner Ruckel: The respondent has control of the gate.

Mr. Hecht: Yes, but he was stopped outside. That is the testimony. We have no control of the sidewalks or of the street.

Trial Examiner Ruckel: Possibly, I don't get the picture.

Mr. Royster: As I understand, the testimony was he was prevented from entering the respondent's gate. I will put the question to him.

(Testimony of Henry Hellbaum.)

Mr. Hecht: If I understood the witness' testimony correctly, he testified that he was prevented from entering the premises. He was not prevented from entering——

Mr. Rowell (interposing): Mr. Hecht, the employers are fond of getting injunctions against people interfering at the gates.

Trial Examiner Ruckel: Will you clear that up?

Mr. Royster: Yes.

Q. (By Mr. Royster): You were stopped on the morning of August 31, Mr. Hellbaum?

A. That is right.

Q. Where were you stopped?

A. Just at the gate. The gate was wide open, and these men, I believe, were just inside the premises.

Trial Examiner Ruckel: And who were the men? [314]

A. Mr. Heide, and, oh—a number—one of the Business Agents was there; Gonick, I believe, and, oh, there must have been 15 or 20 men, many of whom I didn't know.

Q. (By Mr. Royster): Was Hack Gleichman there?

A. He was, but not right at that time.

Q. And it is your testimony that you were prevented from entering that gate?

A. That is right.

Q. By these men?

A. They told me I couldn't go in there.

(Testimony of Henry Hellbaum.)

Mr. Hecht: May I have that date again? August 31?

Mr. Royster: Yes.

Mr. Hecht: May I call your attention to the fact it is claimed that this man was removed from his employment on August 30.

Trial Examiner Ruckel: Yes. I suppose your contention is that he should have been permitted to enter because others were distributing literature and seeking support of the——

Mr. Royster (interposing): No, Mr. Examiner. He was an employee, as far as he knew. I better ask the witness.

Q. (By Mr. Royster): Why did you come to the plant on August 31?

A. Well, I came to report for work.

Q. Had you been informed that you were discharged, or that for any reason you were not expected at work that day? [315]

A. I had not.

Q. Had you worked the previous day?

A. I did.

Mr. Hecht: Again, Mr. Royster, may we have explained to us, since it is somewhat of a surprise to us, why it is claimed in this complaint that the man was discharged on August 30?

Mr. Royster: Well, I don't know that you are entitled to an explanation of that at this time, but I will say this: that it is based upon information given by the company, and the fact is that the last day that he worked was August 30.

(Testimony of Henry Hellbaum.)

Mr. Hecht: Well, Mr. Examiner, I think that this is not within the issues. It is claimed in the complaint this man was discharged on August 30, 1945.

Mr. Royster: If for no other reason, the fact that the complaint alleges on or about August 30, 1945, why this is——

Mr. Hecht (interposing): I don't think it does that.

Mr. Royster: Oh, well, it does. You read it.

Mr. Hecht (examining document): That is right. It does claim "on and about."

My apology to you, sir.

Trial Examiner Ruckel: I am going to let it stand for what it is worth.

Q. (By Mr. Royster): You testified you spoke to Mr. Altman? [316] A. Yes, sir.

Q. And you testified as to what Mr. Altman said to you? A. Yes, sir.

Q. Now, what did you do then?

A. Stood around the gate for some time and conversed with others that were kept out at the same time, weren't permitted to enter.

Q. Did you have any further conversation with any of the ILWU representatives who were standing there?

A. Yes. A man came up to me and——

Q. (Interposing): Who?

A. I learned afterwards it was Hack Gleichman. I didn't know the man at that time.

Q. Very well.

(Testimony of Henry Hellbaum.)

A. And when he learned my name he says, "We know you. You are a Nazi," he says.

Q. Now, have you ever returned to the respondent's plant to work?

A. I went in the back gate; it was open. There was some general contractors working there and we always, or nearly always, when the gate was open, went in the back way. I worked in the boiler room. And I was escorted out by the foreman on the job.

Q. When did this take place?

A. During the time we were out at this meeting.

Q. Oh, this was prior to the time you were stopped at the gate? A. Later.

Q. You were stopped at the gate, Mr. Hellbaum, on the 31st of August, is that not so?

A. That is right.

Q. The continuous meeting——

A. (Interposing): Oh, yes. It was prior. I beg your pardon. It was prior. Sure it was.

Q. Well, now, will you tell me why you went into the plant during the time of this continuous meeting?

A. Well, when we went out to the meeting Mr. Sellers approached me, who is the Plant Engineer, and he asked me how much steam we were going to give them, and I told him, "Enough to man the fire pumps, or one boiler." And I came back to see if other boilers had been put on, that they were giving more steam.

Q. And did you see Mr. Sellers then?

A. No, I did not.

(Testimony of Henry Hellbaum.)

Q. And who did you see?

A. The Foreman in that department, Ernest Martinez.

Q. And you testified Martinez escorted you from the plant?

A. That is right.

Mr. Royster: I think that is all.

Mr. Hecht: Mr. Examiner, I move to strike this incident [318] involving Sellers and Martinez. I do not know what bearing it has on the issues.

Trial Examiner Ruckel: Can you tell us what bearing it has?

Mr. Royster: I'm afraid I can't, Mr. Examiner.

Trial Examiner Ruckel: What?

Mr. Royster: I'm afraid I can't.

Mr. Rowell: That obviously came in by volunteer testimony when the witness misunderstood the question.

Mr. Royster: I hadn't planned to take that testimony from the witness. I just explored it to see what it was. I don't know what bearing it has on the case.

Mr. Hecht: Mr. Examiner, now from the testimony of the witness as to what occurred on August 31 it appears that there was something in the semblance of a picket line in or about the gate of the respondent. It is impossible for the respondent (I think the Examiner will take judicial notice of the fact) to get an injunction, mandatory or otherwise, against a picket line at a moment's notice. There is nothing that brings home this picket line that prevented Mr. Hellbaum from entering the plant to

(Testimony of Henry Hellbaum.)

Mr. Altman, and since there is no testimony of similar incidents occurring after August 30 I move to strike on the ground that it has no bearing whatsoever to the issues of this proceeding.

Trial Examiner Ruckel: Well, it seems pretty remote. [319]

Do you expect to tie it up with other similar——

Mr. Royster (interposing): Well, I will show, Mr. Examiner, by other witnesses, that there was a picket line, as Mr. Hecht characterizes it, at the gate of this plant for the purpose of selecting certain individuals to prevent them from entering the respondent's premises.

Mr. Hecht: How is that brought home to us?

Mr. Royster: That thereafter some of them were discharged, and some of them were not permitted to go to work at all any more. That was the time that these fellows found out that they had no jobs.

Trial Examiner Ruckel: You mean you expect to tie that in with the responsibility of the respondent?

Mr. Royster: Yes, I will.

Mr. Hecht: You will tie it up?

Mr. Royster: Possibly, not as to this individual but as to others, yes.

Mr. Hecht: Well, subject to a motion to strike if Mr. Royster fails to further connect it with the respondent, Mr. Examiner.

Trial Examiner Ruckel: Yes, sir.

Mr. Rowell: Well, now, wait a minute. Even that is going a little too far in the way of ruling,

(Testimony of Henry Hellbaum.)

Mr. Examiner. One of the defenses in this case interposed particularly by the CIO Union, which isn't supposed to be interposing any [320] defenses, is that these people were discharged, or were suspended by the Union, and then discharged by the Company because they went on strike. Now, this evidence all tends to show——

Mr. Hecht (interposing): Now, Mr. Examiner——

Mr. Rowell (interposing): Now, wait a minute. I haven't finished my statement.

This evidence all tends to show that in fact the reason was that they were wearing AF of L buttons, that they were active on behalf of the AF of L, and that was the true reason. Therefore, whether this is tied up directly to the company or not it is highly material to the case.

Mr. Hecht: If you will keep track of the dates——

Trial Examiner Ruckel (interposing): At least I will entertain the motion to strike.

Mr. Royster: That is what I understood your ruling to be, Mr. Examiner.

Mr. Hecht: In order to keep the record straight, may it be borne in mind and in memory that the work stoppage referred to by Mr. Edises and myself in the course of this proceeding was the work stoppage that took place from noon, July 31, to some time on August 3, 1945, and it has no reference to any work stoppage on or about August 30, 1945.

(Testimony of Henry Hellbaum.)

Mr. Rowell: True enough.

Mr. Royster: Certainly. [321]

Mr. Hecht: All right.

Mr. Royster: I never thought otherwise.

Trial Examiner Ruckel: Are there any further questions?

Mr. Royster: No further questions.

Mr. Rowell: Yes, I think so.

Q. (By Mr. Rowell): Mr. Hellbaum, when you tried to get in the plant that day, August 31, was your book paid up in the CIO Union?

A. It was.

Mr. Rowell: I have nothing further.

Cross-Examination

Q. (By Mr. Hecht): Mr. Hellbaum, what was your employment at the respondent's plant?

A. Boiler maintenance man.

Q. Were you working at your job of boiler maintenance man on August 9? A. Yes.

Q. Were you working at your job of boiler maintenance man on August 8? A. Yes.

Q. In that case, what were you doing in the Toilet Articles Warehouse on that date, Mr. Hellbaum?

Mr. Royster: Objection, unless the company proposes to show that this man was discharged for failure to attend to his duties. [322]

Mr. Hecht: Oh, no.

Trial Examiner Ruckel: He may answer.

Mr. Royster: Merely cluttering up the record.

(Testimony of Henry Hellbaum.)

A. It was part of our work to attend to all traps throughout the plant, steam traps, as well as all pumps, the repair and maintenance of pumps throughout the plant, and we worked in all departments as far as repair work was concerned.

Q. (By Mr. Hecht): So that you were combining a bit of electioneering together with your job of attending to traps?

A. Well, I wouldn't say that.

Q. Wasn't it your testimony that you were stopped by Mr. Wood and told to—within distance of Ann Nicoletti, and told to do no more electioneering because the company was taking a neutral position?

A. I was in the warehouse for the purpose of buying a few toilet articles at that time.

Q. So that you were doing no electioneering at that time? A. I was not.

Q. You were not doing any electioneering, so that without any provocation whatsoever Mr. Wood came to you and said, "You must not do any more electioneering?"

Mr. Rowell: Object to the form of the question, "Without any provocation whatsoever." That doesn't—

Q. (By Mr. Hecht): Let us say without you being seen or heard by Mr. Wood doing any electioneering he voluntarily [323] came and made that statement to you?

Mr. Rowell: That doesn't represent the testi-

(Testimony of Henry Hellbaum.)

mony of the witness. Object to the form of the question.

Trial Examiner Ruckel: Objection sustained. I think it is argumentative.

Q. (By Mr. Hecht): Well, why did Mr. Wood say that to you?

Mr. Rowell: He doesn't know. Or do you know?

Q. (By Mr. Hecht): If you know.

A. I don't know.

Q. So your testimony is out of a clear blue sky Mr. Wood told you to stop electioneering?

Mr. Rowell: That is objected to. It is not the testimony of the witness.

Mr. Edises: It is cross-examination.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Hecht): On August 9 what were you doing in the basement where Charlie Grube is the foreman?

A. I went to look after some traps.

Q. And while combining your duties of inspecting steam traps you engaged in this conversation with Grube?

A. It was later in the day that I engaged——

Q. (Interposing): What were you doing there later in the day? Were you on company time then?

A. I had been asked to go down. I was appointed as one of the committee. [324]

Q. On company time?

Mr. Rowell: Well, now, Mr. Examiner, that has gone on too far. Mr. Royster's objection was a good one, and furthermore, unless Mr. Hecht intends to

(Testimony of Henry Hellbaum.)

show that no electioneering was allowed by anybody on company time, and none of the employees were allowed to leave their jobs for conversational purposes of any kind, it is wholly immaterial. Everybody in the plant was doing that.

Mr. Hecht: I submit it is material, Mr. Examiner.

Trial Examiner Ruckel: You may answer.

A. I did do that on company time.

Q. (By Mr. Hecht): Isn't it a fact that you were addressing all the men who were in Charlie Grube's department, that you took six men from their work to address them on behalf of the AF of L? A. I did not.

Q. How many men did you take off their work?

A. I didn't take any men off their work.

Q. You addressed them while they were working, did you not?

A. When I had gone through that morning three of the men saw me go by the door, and they stopped me and told me that Chuck Grube had said this to them.

Q. Yes.

A. I told them when I had more time I would look into [325] it. There were often times when we weren't too busy in our jobs, and other times that we were very busy, and at a leisure time I looked up Chuck Grube.

Q. And you didn't look up anybody else but Charlie Grube at that time? You merely went to

(Testimony of Henry Hellbaum.)

make this inquiry from Charlie Grube, is that correct? A. That is right.

Q. You did not engage in any other electioneering at that time? A. I did not.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I have a few questions.

Q. (By Mr. Edises): Have you got your ILWU dues book with you, Mr. Hellbaum?

A. No, I don't happen to have. I am sorry.

Q. Do you have it available somewhere?

A. I do have it at home.

Q. Will you be good enough to bring it with you tomorrow?

Mr. Rowell: Well, if he is coming back. Couldn't he mail it to the Board in case it is material? I don't know, but there is a process for him to get it here without personally appearing.

Mr. Edises: I don't care how it is done.

Mr. Royster: Do you want to see his dues book?

Mr. Edises: Yes.

Mr. Royster: I will ask the witness now if he will mail it to me so that I may show it to you.

The Witness: I will, yes.

Mr. Edises: All right.

Mr. Hecht: Mr. Edises, I have one more question of this witness.

Mr. Edises: Go ahead.

Q. (By Mr. Hecht): Mr. Hellbaum, did you attend the so-called trial—that is what it has been

(Testimony of Henry Hellbaum.)

referred to—I don't know whether it was one or not—before a committee of the ILWU on December 17, 1945?

A. I did not attend the trial. I was present before the trial.

Q. You were present before the trial?

A. Yes.

Q. And you were asked whether certain charges made against you were true or not?

A. We were given a sheet of paper to read, yes.

Q. And you were there supposedly to stand trial?

A. That is right.

Q. And you walked out?

A. That is right.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Hellbaum, did you take part in the [327] meeting of July 30?

A. Yes.

Q. I will read you Paragraph 2. It states: "Motion by Thompson that we withdraw from the C.I.O. and International Longshoremen's & Warehousemen's Union, District 1, Local 6, form an independent union, and seek affiliation with another International. Motion seconded. Vote carried unanimously, in favor 205, opposed none."

Did you concur in that resolution?

A. Perhaps. I don't remember.

Q. You were present at the meeting?

A. I believe I was, yes.

Q. And you went along with the resolutions that were made, did you not?

(Testimony of Henry Hellbaum.)

A. I don't always take part in resolutions, seldom do, either way.

Q. Well, but did you abstain from voting on that?

A. I probably did, but I wouldn't say for sure.

Q. You mean you probably voted?

A. I probably abstained from voting.

Trial Examiner Ruckel: Probably abstained.

Q. (By Mr. Edises): You probably abstained from voting?

A. I seldom vote, I just stated.

Q. I see. Did you dissent from that resolution?

A. I did not. [328]

Q. You participated in the work stoppage, did you not? A. Yes.

Q. Now, Paragraph 3 reads: "Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shop Stewards laid off by management at request of I.L.W.U. officials. If Shop Stewards don't work, nobody works. Carried unanimously.

Did you concur in that resolution?

A. I did.

Q. Now, you were aware, were you not, that these telegrams, which are Board's Exhibits 5 and 6, were agreed to be sent to the Union and to the company?

A. (Examining documents) I don't seem to remember much about, or anything about the telegrams.

Q. Do you recall the discussion of sending such telegram?

(Testimony of Henry Hellbaum.)

A. Just vaguely in my mind, that there was a discussion about telegrams.

Q. Yes. Well, Mr. Hellbaum, did you in any way oppose any of the actions taken at that meeting? A. I don't believe I did.

Q. When did you join the AF of L? Did you say when?

A. Oh, I don't remember exactly. It was just prior to these meetings.

Q. When did you join the Employees Welfare Association?

A. Well, rather we joined the Welfare Association first, the [329] first meeting, perhaps. I don't even remember for sure.

Q. The July 30 meeting was the first meeting of the Employees Welfare Association, was it not?

A. As far as I know.

Q. Had you been in the habit of attending your union meetings while you were an I.L.W.U. member?

A. We had the privilege of attending the machinists' meeting if we preferred, and usually we went there, all the maintenance men.

Q. But you were a member of the ILWU?

A. That is right.

Q. Did you know that the ILWU had adopted a no-strike pledge during the war?

A. No, I can't say that I was aware of that.

Q. Let me see if I understand you correctly, Mr. Hellbaum. You understand now that you are on the witness stand under oath?

(Testimony of Henry Hellbaum.)

A. That is right.

Q. And do I understand you to say that you did not know that the International Longshoremen's & Warehousemen's Union had taken a pledge, adopted a pledge against striking during the war?

A. I repeat that I don't believe I knew that. I never read their literature.

Q. Is your recollection of the other things that you have [330] testified to about as good as your recollection of this later incident—

Mr. Rowell (interposing): Well, now, that is a favorite question of trial lawyers.

Mr. Edises: I submit I should at least have the courtesy of being permitted to finish my question before I am interrupted.

Mr. Rowel: The question is so familiar to trial lawyers.

Trial Examiner Ruckel: Just a moment. Let counsel finish his question.

Mr. Edises: Mr. Examiner, may I be permitted to have the privilege of finishing my question?

Trial Examiner Ruckel: I said finish your question.

Mr. Edises: Thank you. Now, I would like to have the question read, please, without interruption.

(The question referred to was read by the reporter.)

Mr. Rowell: That is objected to, Mr. Examiner.

(Testimony of Henry Hellbaum.)

Trial Examiner Ruckel: Finish your question. Did you finish your question?

Mr. Edises: That is the question. In other words, it goes to his credibility.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Did you ever hear of a newspaper called the ILWU "Dispatcher"? [331]

A. I have.

Q. As a union member you received a subscription to that, did you not? A. I did.

Q. Did you read the newspaper?

A. I did not.

Q. You did not read it. Do you know who the officers of the ILWU were at that time?

A. I knew some of them.

Q. Do you know who the President was?

A. I believe his name is Lynden.

Q. Arthur Lynden?

A. I don't know him first name.

Q. When Mr. Gleichman called you a Nazi, did you deny that?

Mr. Rowell: That is objected to. That is wholly immaterial.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: I submit it was asked on direct, and besides, Mr. Examiner, it is a well-known principle of law that if a witness is accused of being something and makes no immediate denial, there is an inference to be drawn as to the accuracy of the statement. It is true in negligence cases. I see no

(Testimony of Henry Hellbaum.)

reason why it shouldn't be true in a proceeding like this. [332]

Mr. Rowell: He was not asked that question on direct. He was asked what the conversations were.

Trial Examiner Ruckel: Let's ask if there was any further conversation along that line.

Q. (By Mr. Edises): After Mr. Gleichman accused you of being a Nazi, was there any further conversation?

The Witness: Will you repeat that, please?

Mr. Edises: Will you read the question, please?

(The question referred to was read by the reporter.)

A. Yes.

Q. (By Mr. Edises): Did you deny the accusation? A. I did not.

Mr. Edises: That is all.

Mr. Hecht: Mr. Examiner, I don't recall this Nazi name-calling incident, and, as I recall the testimony, when Mr. Gleichman was talking with Mr. Hellbaum there was nobody representative of the company present.

Trial Examiner Ruckel: That is correct.

Mr. Hecht: So I move to strike it.

Trial Examiner Ruckel: Motion denied. Certainly it doesn't show the company to have been any part of the conversation.

Mr. Hecht: It is in there for whatever it is worth then?

Trial Examiner Ruckel: That is correct. For whatever it [333] is worth.

Mr. Rowell: Well, I submit it isn't worth very much.

Trial Examiner Ruckel: Any further questions of the witness? (No response.)

You have made some reference, I think, to the collection of dues when Mr. Royster was questioning you.

Do you recall what that was?

The Witness: (Affirmative nod.)

Trial Examiner Ruckel: What was your testimony on that?

The Witness: I believe I said I did collect some dues.

Trial Examiner Ruckel: That is while you were a Steward?

The Witness: Well, I was one of the committee to represent the employees in the plant after the nine were suspended.

Trial Examiner Ruckel: Well, that is dues in the AF of L, isn't that correct?

The Witness: That is right.

Trial Examiner Ruckel: Did you collect dues in the plant?

The Witness: Yes. I believe that there was some money brought to me.

Trial Examiner Ruckel: Is there going to be any evidence on the practice, if there was any such practice, [334] of Stewards for the ILWU collecting dues in the plant?

Mr. Edises: Well, I believe that——

Trial Examiner Ruckel (interposing): It is not provided for in the contract, but it is provided they

(Testimony of Henry Hellbaum.)

shall take time off to handle grievances and for one other purpose. It says nothing about the collection of dues, but I wondered in practice if that was——

Mr. Edises (interposing): I believe that that was the practice, Mr. Examiner. In fact, this witness testified that he had seen Mr. Gonick and Mr. Duarte collecting dues.

Trial Examiner Ruckel: I think that is what I had reference to when I asked him what his testimony was.

Mr. Edises: Yes. And I think that was the practice. We can so stipulate if it is material.

Trial Examiner Ruckel: Well, not necessarily now, but at some time I would like to know what the situation was.

The Witness: It was definitely the practice.

Trial Examiner Ruckel: It might have been that the ILWU had certain prerogatives which grew up by reason of a closed shop contract that are not set forth in the contract. If that was one of them I would like to know it.

Mr. Edises: Well, we can stipulate to that. As a matter of fact, I propose a stipulation——

Trial Examiner Ruckel (interposing): If there are any others, I would like to know. [335]

Mr. Edises: I propose to stipulate that the contracting union has always engaged in the practice of collecting dues in the plant.

That is your recollection, is it not, Mr. Hellbaum?

The Witness: That is right.

(Testimony of Henry Hellbaum.)

Trial Examiner Ruckel: And would the same thing go to soliciting new members?

Mr. Edises: It has always been done. The company, I think, hasn't ever denied that privilege to the union. Of course, it was not so much a matter of soliciting as it was of contacting a new employee.

Trial Examiner Ruckel: That is right.

Mr. Edises: And telling him that he was required to join the union.

Trial Examiner Ruckel: By force of the closed shop contract.

Mr. Edises: The contract, but there has never been any objection to that by the company.

Trial Examiner Ruckel: I had assumed not. I was just wondering what the practice was.

Well, may that be stipulated?

Mr. Rowell: We will join in the stipulation on both phases.

Mr. Royster: The Board will so stipulate.

Trial Examiner Ruckel: Any further questions of this [336] witness?

Mr. Hecht: May I ask a question now, or do you gentlemen have further questions?

Mr. Royster: I have nothing.

Mr. Rowell: I have one question, but you go ahead.

Mr. Hecht: I am rather confused by Mr. Hellbaum's testimony.

Q. (By Mr. Hecht): Is it your testimony, Mr.

(Testimony of Henry Hellbaum.)

Hellbaum, that after August 30 you came into the plant to collect AF of L dues?

A. That was after we had the meeting.

Mr. Royster: That was after you were not permitted to enter the plant?

The Witness: No, I didn't enter the plant.

Q. (By Mr. Hecht): You didn't go back to the plant then? A. No.

Mr. Hecht: I just wanted to be clear on that.

Mr. Edises: Now I am not clear.

Q. (By Mr. Edises): You were collecting AF of L dues after the meeting at which the withdrawal resolution was passed; is that correct?

A. That is right.

Redirect Examination

By Mr. Rowell:

Q. At this, what has been referred to as the so-called trial of December 17, the Union trial, you didn't plead guilty, or not guilty, or anything is that right?

Mr. Edises: Well, now, just a minute. I want to object to that as leading and suggestive.

Mr. Rowell: He testified to it before.

Mr. Edises: He did not.

Trial Examiner Ruckel: If he did, why ask him again.

Mr. Rowell: Well, that is just preliminary.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: All right.

(Testimony of Henry Hellbaum.)

Q. (By Mr. Rowell): Did you plead at that so-called trial? A. I did not.

Q. What did you do? Did you stand trial?

A. No.

Q. Was there a statement read by you or on your behalf as to the reasons why you were not standing trial? A. There was.

Mr. Rowell: Will you mark this for identification?

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 1 for identification.)

Q. (By Mr. Rowell): I show you a paper which has been marked as Petitioner's Exhibit 1 for identification and ask you to read it and state whether or not that was the statement which was read on your behalf at the time you walked out, or didn't stand trial, on December 17, 1945? [338]

A. (Examining document.)

Trial Examiner Ruckel: Do you have to read it all?

The Witness: I believe that this is the letter.

Mr. Rowell: I will offer it in evidence, Mr. Examiner.

Mr. Edises: I will object until there is some showing of what relevancy and materiality is.

Mr. Rowell: All I do is complete the story that is brought out by Mr. Hecht, Mr. Examiner. That is all it is.

Trial Examiner Ruckel: Well, we are not inter-

(Testimony of Henry Hellbaum.)

ested in any phase of the story unless it involves the Respondent's knowledge of it.

Mr. Hecht: Well, Mr. Rowell, in my questions, I submit to you, and I stipulate further that if I fail to show by my witnesses that we had knowledge of the fact that this man appeared at the trial and refused to stand trial, if I don't show that you may move to strike those questions and those answers.

Mr. Rowell: Likewise, the reason why he refused to stand trial is of some materiality.

Trial Examiner Ruckel: It is not material as far as the Respondent is concerned. It might be material so far as the two unions are concerned.

Mr. Rowell: Well, then, the union is putting in defenses here that——

Trial Examiner Ruckel (interposing): The Union isn't [339] putting in any defense.

Mr. Rowell: I know, but it is supporting the defense of the company to the extent that these people were discharged because of strike action.

Trial Examiner Ruckel: Well, the company has indicated that they had some knowledge of the trial, but I thought we threshed that out yesterday. The materiality could only be the fact of a trial, and the Respondent's knowledge, and not the merits of the trial, or whether it was a fair trial or not, or not any statements or pleadings that took place at the trial.

Mr. Rowell: If Mr. Edises is going to offer those records of that trial——

Mr. Edises (interposing): Well, I submit that

(Testimony of Henry Hellbaum.)

I was not aware that Mr. Rowell had the talent of being a mind reader.

Trial Examiner Ruckel: He has not yet, anyway. The exhibit is rejected.

Mr. Rowell: All right. May I have it retained as marked for identification?

Trial Examiner Ruckel: That is right.

Mr. Rowell: And I will renew the offer if Mr. Edises makes a similar offer.

Trial Examiner Ruckel: Put it in a rejected exhibit file.

(Thereupon, the document heretofore marked
Petitioner's Exhibit No. 1 for identification,
was rejected.) [340]

Mr. Rowell: Mr. Hellbaum, let me ask one more question on this matter of pleading which you did at that trial.

Are you certain, as a matter of fact, do you know that you didn't plead guilty, or do you know that you plead not guilty, or nothing at all? Do you remember?

A. I plead "Not guilty."

Mr. Rowell: Yes, that is all.

Recross Examination

By Mr. Edises:

Q. You say that you entered a plea of "Not Guilty" at the trial, is that right?

A. I did.

(Testimony of Henry Hellbaum.)

Trial Examiner Ruckel: Any further questions?

Mr. Royster: None.

Mr. Hecht: No further questions.

(Witness excused.)

Mr. Royster: I am ready to call another witness.

Trial Examiner Ruckel: We will recess until 9:30 tomorrow morning.

Mr. Edises: Oh, one moment, Mr. Examiner. Is Mr. Thompson here?

Mr. Royster: Yes.

Mr. Edises: May we have Mr. Thompson take the stand for just a moment?

Trial Examiner Ruckel: Yes, Mr. Thompson.

EDWARD H. THOMPSON

called as a witness by and on behalf of the Trial Examiner, being first duly sworn, was examined and testified as follows:

Mr. Edises: Will it be stipulated that this is cross examination?

Mr. Royster: I don't see why I should do it again, Mr. Edises. We had a stipulation whereby it was agreed it was unnecessary to call Mr. Thompson.

Trial Examiner Ruckel: I will take the witness over.

(Testimony of Edward H. Thompson.)

Direct Examination

By Trial Examiner Ruckel:

Q. Mr. Thompson, what is your first name?

A. Edward H. Thompson.

Q. Where do you live?

A. 1034 Virginia Street, Berkeley.

Trial Examiner Ruckel: Cross examination for the Board?

Mr. Royster: No questions.

Trial Examiner Ruckel: The Union?

Cross Examination

By Mr. Edises:

Q. Mr. Thompson, I show you Intervener's Exhibit No. 2 which has been identified as the minutes of the meeting of July 30, concerning which there has been testimony, and at the foot of these minutes appears "E. H. Thompson, Recording Secretary." [342] Does that refer to yourself?

A. Yes, I was the Recording Secretary.

Q. You were the person who took these minutes?

A. Yes.

Q. Will you glance over them and tell me whether those minutes comport with your recollection, whether they are, so far as they go, a true and correct account of what took place at the meeting?

A. (Examining document): Yes, I believe these are.

(Testimony of Edward H. Thompson.)

Q. And the same question in regard to the minutes of the meeting of July 31 and August 2?

A. (Examining documents): Yes, I think these are correct. On this July 31—on this August 2 meeting, though, I don't think I was Recording Secretary on there. I probably was Recording Secretary—I am not quite certain whether I was. That is when we made a change.

Q. In any event, the contents seem to you to be accurate?

A. Yes, the contents seem to be. I don't know whether they are word for word, but they are——

Q. I see. Now, in the minutes of July 30 there appears this statement: "William Stolba, L. Olsen, Dave Luchsinger, Wm. Sherman, E. H. Thompson following general meeting visited an attorney for legal reasons as to the best way to complete severing relations with I.L.W.U. 1-6."

Who was the attorney you visited in that connection? [343]

A. I can't think of his name right off at present. I got his name at home, though. I could mail it in to the Board, if it is necessary.

Q. Is he an attorney at law practicing in Oakland, California?

A. Yes, he is an attorney in Oakland.

Q. And what advice did he give you?

A. He gave us the advice to send that telegram.

Q. Sending the telegram? A. Yes.

Q. And those telegrams are——

A. (Interposing): He drafted the telegrams.

(Testimony of Edward H. Thompson.)

Those are the telegrams what these others read here.

Q. Those which are in evidence as Board's Exhibits 5 and 6, is that correct? A. Yes.

Q. The question you asked of him was as to the appropriate legal method whereby these employees could sever their relations with ILWU, Local 6, is that correct?

A. That is right. And they asked numerous other questions. I don't remember or recall all the questions that they asked. They spent quite a bit of time with him, and he also started drafting a charter, or by-laws for a new Employees Welfare Association.

Mr. Edises: I see. That is all. [344]

Q. (By Mr. Rowell): In other words——

Mr. Edises (interposing): I am sorry. Just one other question.

Q. (By Mr. Edises): Were you aware of the ILWU's no-strike pledge? A. Yes, I was.

Mr. Edises: You were.

Q. (By Mr. Rowell): In other words, Mr. Thompson, when you consulted this attorney you were consulting him with reference to the appropriate legal method of changing your affiliation from the ILWU to a new labor organization, or a different labor organization?

A. That is correct, to the Employees Welfare Association, to the independent union.

Mr. Rowell: Yes.

(Testimony of Edward H. Thompson.)

Trial Examiner Ruckel: Questions by the Respondent?

Mr. Hecht: No questions, Mr. Examiner.

Mr. Rowell: On the record I would like to state to Mr. Edises that the attorney contacted by Mr. Thompson and others on the occasion you requested information about was George Gelder, G-e-l-d-e-r, in the Easton Building, 13th and Broadway, Oakland.

Trial Examiner Rucker: Is that correct?

The Witness: That is correct. I remember his name now that somebody mentions it. [345]

Trial Examiner Ruckel: That is all.

(Witness excused.)

Trial Examiner Ruckel: We will recess until 9:30.

(Whereupon, at 5:15 p. m. an adjournment was taken to Thursday, February 7, 1946, at 9:30 a. m.) [346]

Thursday, February 7, 1946

(Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 a.m.)

Proceedings

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Royster: Mr. Examiner, during the cross-examination of witness Henry Hellbaum yesterday, counsel for the intervener requested that the witness supply him with his union dues book, that is, his ILWU union dues book.

I would like the record to show that that book was delivered to counsel for the intervener this morning.

Do you agree, Mr. Edises?

Mr. Edises: Certainly.

Mr. Royster: The Board calls Kay Norris.

KAY NORRIS,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, Mrs. Norris, please.

A. Kay Norris, 2342 17th Avenue, Oakland, California.

Q. And how long were you employed by the respondent?

A. I first went to work for Colgate's in 1933,

(Testimony of Kay Norris.)

and I quit and went to work again in 1940, and up to September 1st when I was suspended.

Q. That is September 1, 1945? [350]

A. 1945.

Q. Were you a member of the ILWU?

A. I was.

Q. And for what period of time?

A. June 3, 1941, up to the time I was suspended.

Q. Now, Mrs. Norris, I show you Board's Exhibit 4 and ask if you have seen that before?

A. (Examining document): I have.

Q. And will you tell us when you saw it?

A. I saw it on the—I believe it was the 30th of July.

Q. 1945?

A. 1945. Ed Bopp threw it on my lap.

Q. Where were you at the time?

A. I was working in the Toilet Goods Department on the Cashmere Bouquet machine. Mr. Gonick come along after him and told me if I attended that meeting I would get into serious trouble.

Trial Examiner Ruckel: Who is Mr. Gonick?

Q. (By Mr. Royster): You didn't attend the meeting, did you?

Trial Examiner Ruckel: Who is Mr. Gonick?

The Witness: He is the Business Agent.

A. I did not attend the meeting because I had an appointment with the doctor.

Mr. Edises: Which meeting are we speaking of?

Mr. Royster: This is the July 30 meeting.

Mr. Hecht: July 30 meeting.

(Testimony of Kay Norris.)

Q. (By Mr. Royster): Did you sign an application for membership card in the AF of L?

Mr. Hecht: Mr. Examiner, before we go any farther (of course, apologizing at the outset, Mr. Royster), I make a motion to strike the testimony as to having Exhibit 4 thrown in her lap and the remarks of Gonick, there being no one representing the company present at the time and place.

Trial Examiner Ruckel: There was no foreman or supervisor present on that occasion, was there?

The Witness: There was a foreman about five feet away from me; Albert Zulaica.

Mr. Rowell: Now, Mr. Examiner, if you are contemplating ruling on that objection favorably, I would like to be heard for just a moment.

Trial Examiner Ruckel: I haven't ruled. I am still asking the witness.

Mr. Hecht: Mr. Examiner, the answer that Albert Zulaica was a foreman, Mr. Zulaica was on the stand yesterday. He had no position——

Mr. Royster (interposing): I believe he may have been a leaderman. There is no contention that Zulaica was a representative of the company.

Trial Examiner Ruckel I think it is perfectly clear [352] that the respondent isn't bound by that particular conversation, but the motion to strike is denied. It is the general picture that we are trying to get.

Q. (By Mr. Royster): I believe my question was: Did you sign an application for membership card in the AF of L?

A. I did, on the third of August.

(Testimony of Kay Norris.)

Q. And again, of course, you mean August, 1945? A. Yes, sir.

Q. Now, Mrs. Norris, you did not work from noon July 31, until the morning of August 3, did you? A. I did not.

Q. You refrained from working, as did most of the employees? A. I did.

Q. Did you work in the month of August, starting with August 3? A. I did.

Q. Did you see Hack Gleichman during that month? A. I did, numerous times.

Q. Where did you see him?

A. I saw him out on the platform, in the Toilet Goods Department. I saw him talking with Mr. Wood out in the yard. I saw him talking to Mr. Altman numerous times, and Mr. Railey.

Q. Did you overhear any conversation that Mr. Gleichman may have had with anyone in the Toilet Department? [353]

A. Yes. He went around to numerous employees on our floor and warned them to take their buttons off or they would be suspended as—they would be in the same predicament as the Stewards were.

Q. Did you hear him say that?

A. I heard him.

Q. What buttons do you mean?

A. The AF of L buttons, Chemical Workers Union.

Q. Did you wear an AF of L button at work?

A. I did.

(Testimony of Kay Norris.)

Q. Did you wear it prominently on your clothes?

A. I wore it at all times.

Q. Did you pass out any AF of L literature?

A. I did.

Q. That was in the plant?

A. In the plant.

Q. Did you pass out AF of L buttons?

A. I did, in the plant.

Q. I show you a writing, Mrs. Norris, of two mimeographed sheets and ask you if you can identify it. A. Yes.

Mr. Royster: Will the reporter mark this as Board's Exhibit 12 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 12 for identification.) [354]

Q. (By Mr. Royster): Where have you seen Board's Exhibit 12 for identification before?

A. I came to work the next morning and they were distributed all throughout the women's eating room.

Mr. Hecht: What does she mean by "next morning"?

Q. (By Mr. Royster): What do you mean by "next morning," Mrs. Norris?

A. Well, I first saw it on the time clock.

Q. In what building?

A. Well, I don't know what building I am in. I am on the "A" floor.

Mr. Hecht: Mr. Royster, just a moment. May we have the date when she saw it?

(Testimony of Kay Norris.)

Mr. Royster: I am trying to fix that, Mr. Hecht.

Mr. Hecht: All right, thank you.

Q. (By Mr. Royster): When you say you saw it at the time clock, do you mean on a bulletin board there? A. Yes, sir.

Q. And it was on the bulletin board in the building in which you worked? A. Yes, it was.

Q. And what department did you work in?

A. Well, I work in the Toilet Goods Department but the time clock is not on my floor.

Q. But it is in the same building? [355]

A. It is in the same building.

Mr. Royster: Well, can we discover in what building the Toilet Goods Department is?

Mr. Hecht: That is the "L" Building.

Q. (By Mr. Royster): In the "L" Building?

A. The "L" Building.

Q. Now, when did you see this on the bulletin board there, Mrs. Norris?

A. I believe it was on the 22nd.

Q. Of what? A. Of August.

Q. Last? A. Yes.

Q. Did you see it any place other than the bulletin board? A. And upstairs on the table.

Q. Did you see anyone distribute any?

A. No, I did not.

Mr. Royster: I will offer Board's Exhibit 12 for identification in evidence.

Mr. Hecht: No objection.

Mr. Edises: No objection.

Mr. Rowell: No objection.

(Testimony of Kay Norris.)

Trial Examiner Ruckel: It will be received.

(Thereupon, the document heretofore marked Board's Exhibit 12 for identification was received in evidence.) [356]

Trial Examiner Ruckel: May I inquire: What do you claim for this testimony, though, that Gleichman, I believe it was, or someone else, threw this circular, Board's Exhibit 4, in her lap, and that Board's Exhibit 12 was circulated in the plant?

Mr. Royster: Board's Exhibit 12, Mr. Examiner, states under Item No. 7 that "Any Peet's employee reported as trying to get people to bolt the CIO and join the AF of L or wearing an AFL button, will be taken off the job."

The Board contends that the respondent, by virtue of that exhibit, was placed on notice as to the intent of the CIO Union with respect to the employees who took part in any AF of L activity. The Board further contends that this casts a revealing light upon the motivation of the CIO in securing subsequently the discharge of these employees.

Mr. Hecht: May I point out, Mr. Examiner, that although the witness has testified that it was on the bulletin board, that mere fact does not bring it home to the respondent.

Mr. Royster: Well, you can so contend.

Trial Examiner Ruckel: May I inquire, are these bulletin boards maintained by the Union or are they company bulletin boards?

Mr. Royster: I don't know.

(Testimony of Kay Norris.)

Mr. Hecht: They are maintained for the use of anyone [357] that wants to put up any notice, as far as I know, Mr. Examiner.

Trial Examiner Ruckel: Well, let that be developed later.

How about this notice being placed in her lap, you mean the same effect is claimed for that?

Mr. Royster: The same effect is claimed for that, that these notices, warning notices, were distributed very generally throughout the plant (I think the evidence shows that) that they must inescapably have come to the notice of the company.

Mr. Hecht: I object to the "must inescapably," Mr. Examiner.

Mr. Royster: He asked for my contention and I am giving it.

Trial Examiner Ruckel: That is his contention.

Mr. Royster: And that it shows again that the ILWU was determined to secure the discharge of persons who attended this meeting, and it puts the company on notice as to that intention.

Trial Examiner Ruckel: You are not contending that the company respondent favored one above the other in the solicitation of support for the organization?

Mr. Royster: Yes, I do contend that.

Trial Examiner Ruckel: This witness testified, and so [358] did one yesterday, that they wore their AF of L buttons freely in the plant, in fact, the one yesterday testified that he obtained members for the AF of L in the plant.

(Testimony of Kay Norris.)

Mr. Royster: Oh, yes, that is correct, Mr. Examiner. I claim that they paid a bitter price for doing so.

Trial Examiner Ruckel: Well, this goes principally to the question of notice rather than as violation of Section 8(1).

Mr. Royster: Yes, I think that is so.

Q. (By Mr. Royster): Mrs. Norris, did you have a conversation——

Mr. Hecht (interposing): Mr. Examiner, may I say this: Since Mr. Royster has already adverted to Sections of the Exhibit 12 it is to be noted too that there are other complaints made against the discharge, the removed Stewards, in that Exhibit 12 in addition to any question of AF of L affiliation, so the exhibit is offered as a whole, I think.

Mr. Royster: Oh, yes.

Trial Examiner Ruckel: Yes.

Q. (By Mr. Royster): Did you have a conversation about August 30, 1945, with Mr. Gleichman?

A. I did.

Q. And where did this conversation take place?

A. It took place in the Toilet Goods Department while I was working. [359]

Q. And who was present during this conversation?

A. All of the employees were working at the time, and one of the foremen.

Q. Pardon me?

A. And one of the foremen, leaderman.

(Testimony of Kay Norris.)

Q. A leaderman? A. Yes.

Q. Not the regular foreman of the department?

A. No, a leaderman.

Q. And what was the conversation?

A. He came up and tapped me on the back and said, "Let me see your book."

Q. And what book did he have reference to?

A. He meant my union book.

Q. And what union? A. In the ILWU.

Q. All right.

A. And I told him I didn't know who he was, and he said, "Well, you know this man, George Squires."

Q. George Squires. He is an employee of the respondent, is he not? A. Yes, he is.

Q. At that time was he not a steward of the ILWU? A. Yes, he was picked out.

Q. Well, he was a Steward of the ILWU at that time, wasn't [360] he?

A. ILWU. And he said, "Well, then, show him your book." I said, "No," because he was appointed by the CIO and not elected by the company.

Q. You refused to show your book?

A. So I refused to show my book. So Mr. Gleichman said, "Show your book to me. I represent ILWU." I told him if he would show me credentials of any kind I would show him, so he gave me his card, and I showed him my book.

Q. Now, after you showed him the book, was there any further conversation with Mr. Gleichman? A. Yes.

(Testimony of Kay Norris.)

Q. And what was that conversation?

A. He told me that I was campaigning in there, that I was going to get in trouble, that I was nothing but a Nazi leader. He asked me to go see a certain picture, and said that that is just exactly what I am. I learned later that this certain picture was a Nazi picture.

Trial Examiner Ruckel: You mean an "anti-Nazi" picture, I suppose?

The Witness: Yes.

Q. (By Mr. Royster): Was there any mention of union buttons?

A. He told me to take my union button off.

Q. What union button were you wearing?

A. My AF of L union button off, and I wouldn't do it. And [361] he said, "You better take that button off." I told him I bought the button, and if he bought his pants he paid for them, and I bought my button, and when he dropped his pants I dropped my button.

Q. Now, is Mr. Mason a foreman of your department? A. He was; he is.

Q. Where was he when this conversation took place?

A. He was on the floor, but he was too far away to hear me.

Q. Could he see that you were in conversation with these men?

A. He could see, yes. He was——

Mr. Hecht (interposing): I object to the conclusion that he could see, Mr. Examiner. It is pos-

(Testimony of Kay Norris.)

sible that he might have been able to see, but no one here can testify that he could see.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Royster): Well, could you see Foreman Mason?

A. I could. He was in plain sight.

Q. Was his face turned in your direction?

A. Right towards me.

Mr. Hecht: That is pretty leading, Mr. Examiner, but we will let it go.

Q. (By Mr. Royster): Now, on August 31 did you have a further conversation with Mr. Gleichman? A. I did. [362]

Q. And where did this conversation take place?

A. At the very same place.

Q. And again who was present?

A. All the employees, and this leaderman was just a few feet away from me.

Q. Was Mr. Mason there?

A. Mr. Mason was standing outside his office door.

Q. Would you say that Mr. Mason was too far away to hear any conversation? A. He was.

Q. Could you see Mr. Mason?

A. I could see Mr. Mason.

Q. Which way was Mr. Mason's face turned?

A. Well, he would be out that way and I am here (indicating).

Q. I mean with reference to where you were standing? A. What?

Q. With reference to where you were standing, which way was Mr. Mason's face turned?

(Testimony of Kay Norris.)

A. Well, he was looking toward me.

Mr. Edises: Mr. Examiner, I want to move to strike the testimony as to what Mr. Mason was doing subsequent to the witness' testimony that he was too far away to hear her. She has obviously disqualified him as a competent witness to this conversation.

Mr. Royster: Well, now, Mr. Examiner, it may develop [363] that what Mr. Mason could have seen at this time is a point.

Trial Examiner Ruckel: Well, it may stand.

Q. (By Mr. Royster): Now, what was your conversation with Mr. Gleichman on this occasion, Mrs. Norris?

A. I saw Mr. Gleichman coming. My machine was broken down, so I walked over to talk to one of the girls because he made it so tough for me the day before that I didn't want to get into an argument with him. Well, he followed me. He asked me if I had changed my mind, that he gave me time to go home and think it over, that I would drop AF of L and stick by CIO. I told him "No," that I hadn't changed my mind. He said, "I held a letter out for you until today." He says, "You are fired. You might as well get off the floor right now," and I got off.

I walked over to Don Stanberry, the Superintendent, and I said I didn't see why I should be treated that way, that I didn't do anything.

Q. Well, now, just a minute.

Just what did you tell Don Stanberry?

(Testimony of Kay Norris.)

A. I said, "That union fellow kicked me off the floor. He told me I was fired," and he shook his head and he said, "He can't do that."

So I said, "Well, I am going down to see Mr. Altman and find out if he can kick me off the floor."

I went downstairs, to the office, and Mr. Altman was not there, but Mrs. Olys was there.

Q. That is O-l-y-s.

A. I don't know how she spells her name.

Trial Examiner Ruckel: Who is she?

A. She was at the time the timekeeper.

Q. (By Mr. Royster): And after a conversation with Mrs. Olys what did you do?

A. She walked out on the platform with me, and she said, "Don't cry, Kay. You go right back up to your job," and I did.

Mr. Hecht: Mr. Examiner, whatever Mrs. Olys said I would like to have stricken.

Trial Examiner Ruckel: "Don't cry, Kay."

Mr. Hecht: "Don't cry, Kay."

Trial Examiner Ruckel: Well, it is part of what happened.

Mr. Royster: We make nothing of it.

Trial Examiner Ruckel: She went back to her job.

You went back to your job?

Mr. Hecht: I realize, Mr. Examiner, you are not impressed by this, but it does clutter the record.

Trial Examiner Ruckel: It may stand.

What did you do when you went back to your job?

(Testimony of Kay Norris.)

The Witness: I went back to my job, and I didn't say [365] anything.

Q. (By Mr. Royster): Well, you worked the rest of that day, did you?

A. I worked the rest of the day.

Q. Now, on the following day, September 1, did you come to work? A. I did.

Q. And how long did you work?

A. I worked until five minutes to three.

Q. And then what did you do?

A. I was told by my floorlady I was wanted in Mr. Railey's office.

Mr. Hecht: Mr. Royster, that is September 1?

Mr. Royster: September 1, yes.

Q. (By Mr. Royster): And did you go to Mr. Railey's office? A. I did.

Q. And whom did you see there?

A. I saw Mr. Railey, Mr. Wood, Mr. Altman, Mr. Cecil Carter, and Mr. Don Stanberry.

Q. And were other employees of the company there?

A. And other employees, about 18 or 19 of us.

Q. And was there any conversation there?

A. There was.

Q. Will you tell us what it was?

A. I said, "Well, what are we in here for?" Mr. Wood said, [366] "You will find out."

So Mr. Altman said, "Are they all here? Let's get this thing overwith." And he read where the CIO stated that we were——

Q. (Interposing) Just a moment, Mrs. Norris.

(Testimony of Kay Norris.)

I have a copy of the letter which the witness will testify was read on the occasion, and it may already be in evidence.

Mr. Hecht: I don't think so, Mr. Royster.

Mr. Royster: I will have it identified, then.

Q. (By Mr. Royster): Now, I believe you testified that a letter was read to you by Mr. Railey?

A. It was.

(Whereupon, the document above referred to was marked Board's Exhibit 13 for identification.)

Q. (By Mr. Royster): I will show you Board's Exhibit 13 for identification and ask you if that is the letter.

A. (Examining document) This is the letter.

Mr. Royster: I offer Board's Exhibit 13 for identification in evidence.

Mr. Rowell: No objection.

Mr. Edises: No objection.

Mr. Hecht: No objection.

Trial Examiner Ruckel: It will be received.

(Thereupon, the document heretofore [367] marked for identification as Board's 13 was received in evidence.)

Q. (By Mr. Royster): Was there further conversation after the reading of this letter, Mrs. Norris?

A. Yes. I spoke up and asked why we were——

(Testimony of Kay Norris.)

Q. (Interposing) Whom did you ask now? Let's get that.

A. I asked—well, I believe Mr. Wood had said something. I don't recall what he had said. And I said to Mr. Wood, "What are the charges?" He said he didn't know. I said, "I know why. It is because we wore AF of L buttons and we distributed literature." And he said, "I guess it is so, that could be it."

Mr. Hecht: How many were present?

Mr. Royster: She named the company officials who were there, and I believe she said 18 or 19 other employees.

Mr. Hecht: Oh, I see.

Q. (By Mr. Royster): Now, was there other conversation on this occasion, Mrs. Norris?

A. Yes. Mr. Railey said, "You people—we have asked you years ago not to join any unions, and we fought you." He said, "You fought us, you joined a union. You got into trouble," he says, "Now fight it." And Mr. Wood quoted him.

Q. What do you mean by that?

A. Well, Mr. Wood said, "That is right, that is right."

Q. Did you have any conversation with Mr. Stanberry on this [368] occasion?

A. No, not while I was in Mr. Railey's office.

Q. Do you recall any further conversations in Mr. Railey's office on this occasion?

A. Yes. Mr. Wood told us all that we did too much talking, that we talked too much, that if we

(Testimony of Kay Norris.)

had kept our mouths shut we wouldn't have got into this mess.

Q. Did you hear any of the other 18 or 19 employees ask any questions of Mr. Wood, Mr. Bailey, Mr. Stanberry, or any of the company officials on that occasion?

A. There was a question asked Mr. Bailey as to whether he was—whether the company was neutral. He said—Mr. Wood then spoke up and said, “We are neutral.” So it was asked why was Mr. Altman and Mr. Cecil Carter at the gate and locked everybody out? If they were neutral why did they do that?”

Mr. Hecht: There is no evidence here as to anybody being locked out. I think that is a very prejudicial and voluntary statement on the part of the witness and I object.

Trial Examiner Ruckel: There is no evidence as such in the case, but this witness is repeating what was said.

Mr. Hecht: Who said it?

Mr. Rowell: Well, now, wait a minute. Who is examining?

Mr. Hecht: Well, I mean I am going to object to this.

Trial Examiner Ruckel: Somebody asked that of Mr. Wood.

Mr. Hecht: Who asked it? [369]

The Witness: Someone asked. I believe it was Mr. Terry Anderson.

Mr Hecht: Can you produce Mr. Anderson?

(Testimony of Kay Norris.)

Mr. Royster: He will be a witness.

Trial Examiner Ruckel: What was said in response to that?

The Witness: And we asked Mr. Altman then to tell us why he had been at the plant at six o'clock in the morning when he usually reports to work at seven, and he wouldn't answer us, rather, I didn't hear the answer.

Mr. Hecht: I object to that type of testimony. It has no relevancy, no materiality, whether Mr. Altman would come in at five or twelve or six.

Trial Examiner Ruckel: Well, let's hear the entire conversation.

Was any answer made to this locking out question?

The Witness: I didn't hear it, if there was. I didn't hear what Mr. Altman said.

Mr. Hecht: The witness didn't hear any answer. I move to strike.

Trial Examiner Ruckel: It may stand. It is all part of one conversation.

Give us the rest of it so far as you recall.

Q. (By Mr. Royster): Have you exhausted your recollection of the conversations that took place on this occasion, Mrs. [370] Norris?

A. Well, just—these are what I can remember. There was quite a bit said, but most of this I hashed out myself, between Mr. Railey and Mr. Wood and myself, and I know just about what I said and what they answered me.

Q. Now, do you recall if there was any mention

(Testimony of Kay Norris.)

by anyone present at this meeting with respect to changing unions?

A. Yes, we told them that.

Q. Now, can you be a little more specific? Did you tell anybody this, or did you hear someone else tell someone what you were about to relate? You say "we told."

Mr. Hecht: Mr. Examiner, before the question is answered I would like to object to any more statements as to change of unions. It is obvious Exhibits 5 and 6 show all these people intended to change unions, and, as a matter of fact, changed unions by reason of these wires, at least, severed their relations, and whatever they said later on as to the changed unions is not material here.

Mr. Royster: Well, it may be very material.

Trial Examiner Ruckel: It might be. Let's see what the company representatives said, if anything.

Now, you said, "We said," and "they said."

Now, who is "we" and who is "they"?

The Witness: Well, us 19—18, it was 18, they counted 18 that day, but there was 19 on the list, I think on the [371] list; that is why I say 18 or 19 in there that day.

Q. (By Mr. Royster): That is employees who are named on Board's Exhibit 13, is that what you intend to say? A. Yes.

Q. They were present along with the company officials that you named?

A. They were present, yes.

Q. Now, you said, or started to say "We said."

(Testimony of Kay Norris.)

A. Someone in the group.

Q. In the group. What do you mean by "group"?

A. In this group that were suspended September 1.

Q. Someone of those said——

A. Spoke up and said that we—"I don't see why we can't, why we are not entitled to change from one union to another." Then we started in telling Mr. Railey of it.

Q. Now, was there any response made to this? You testified that one of these 18 said, "I don't see why we can't change from one union to another." Did any of the company officials there present make any response to that in your hearing?

A. Not that I can recall.

Mr. Royster: All right.

Trial Examiner Ruckel: What was the answer?

(The answer referred to was read by the reporter.)

Mr. Edises: I believe she was continuing her statement of the conversation. [372]

Q. (By Mr. Royster): Was there anything further? I certainly didn't want to interrupt.

Trial Examiner Ruckel: Did you have anything further to say?

The Witness: No.

Trial Examiner Ruckel: About what was said about changing unions?

The Witness: Well, then I spoke up and I said, "I go by the American flag, and I can join any

(Testimony of Kay Norris.)

church I want. I don't see why I can't join any union I want."

Trial Examiner Ruckel: All right.

The Witness: That is all.

Trial Examiner Ruckel: Then did any of the company representatives say anything in response to that statement of yours?

The Witness: No; I don't recall.

Q. (By Mr. Royster): There came a time when you left this meeting? A. Yes.

Q. After you left the meeting did you have any conversation with Mr. Stanberry? This is on the same day I mean?

A. Yes. I went out on the platform to pick up some soap I had bought. Mr. Stanberry helped me put it in the car. And I said to Mr. Stanberry, "Well, goodbye, Don. I guess I am washed up." And he said, "No, Kay, don't feel that way." He said, "This thing will all straighten out."

Q. Did you have any further conversation with Mr. Wood on that day?

A. Mr. Wood come out the door and he says, "Don't let her out yet, don't let her drive away." He says, "Just a minute." And he waited a while and somebody was on the phone, I imagine. He said, "No, they said go ahead and let them go."

So Mr. Wood walked over to me and, well, he said again that I talked too much and hadn't I wore my button I wouldn't be in the predicament I was in.

Mr. Hecht: Who said this?

(Testimony of Kay Norris.)

The Witness: Mr. Wood. He walked out on the platform and he said, "If you hadn't a wore your button," he said, "and if you hadn't talked so much," he said, "you wouldn't be in the predicament you are."

I turned away, and I walked away and got in my car and drove home.

Q. (By Mr. Royster): Have you since been employed by the Respondent?

A. I haven't.

Mr. Royster: That is all.

Trial Examiner Ruckel: Any further questions by the AF of L?

Mr. Rowell: No, no questions.

Trial Examiner Ruckel: For Respondent? [374]

Mr. Hecht: Mr. Examiner, the story of this September 1 meeting as told by Mr. Zulaica was neither as dramatic nor as elaborate as the one we have just heard, and I am afraid it is going to become more so as the witnesses get on the stand. I am going to make a motion to exclude witnesses from the hearing room, or I am making the motion.

Mr. Rowell: There is certainly no necessity for that, Mr. Examiner.

Trial Examiner Ruckel: Beg pardon?

Mr. Rowell: There is no indication that anybody is learning anything they didn't know before from listening to her testimony.

Trial Examiner Ruckel: Is the motion opposed? Is that it?

Mr. Royster: Yes, I oppose the motion. I think

(Testimony of Kay Norris.)

it is unusual. There is nothing here to indicate the propriety of such motion.

Trial Examiner Ruckel: I don't know what witnesses are in here. I would be disposed to grant the motion with respect to all those except those that are named in the complaint, as having been discharged. Probably those are the only witnesses here.

Those are the ones whom you would seek to exclude?

Mr. Hecht: Yes, sir. I have a feeling that they become, or may become suggestible as they hear testimony here. [375]

Mr. Rowell: Your feelings in the matter are not very material, Mr. Hecht.

Mr. Hecht: I think it is an ordinary human understanding.

Trial Examiner Ruckel: I do ask the Board to excuse from the room all of those excepting those named in the complaint as having been discharged. The Board regards those as in a sense parties to the proceeding, with something material at stake. It doesn't think they should be excluded during the trial of their case.

Are there any others than those named in the complaint?

Mr. Royster: Mr. Examiner, do I understand that if there be others they need not be excluded unless it is intended that they testify concerning events on September 1?

Trial Examiner Ruckel: Well, no, except the

(Testimony of Kay Norris.)

Respondent has no means of knowing that that is the sole purpose of their testimony.

Mr. Royster: Well, I have no witnesses here today, and I plan to call none except possibly one who is not named in the complaint, and the one that I may call who is not named in the complaint is not here today.

Trial Examiner Ruckel: Well, that one person isn't here now, is that correct?

Mr. Royster: That is correct.

Trial Examiner Ruckel: Are you satisfied with that [376] statement, Mr. Hecht?

Mr. Hecht: Yes, sir, Mr. Examiner.

Trial Examiner Ruckel: Proceed.

Mr. Hecht: Mr. Examiner, at this point I am going to make a motion to strike all of the testimony relating to interviews with Gleichman, where the witness has testified that Mr. Mason was too far away to have heard anything.

Trial Examiner Ruckel: While it is true that in each individual case there might not have been a representative of management present, nevertheless it still is possible that such a picture will be painted of widespread activities that from their sheer number one could argue that the Respondent knew of it even though he might not have known of each individual conversation.

Mr. Hecht: May I ask how?

Trial Examiner Ruckel: The whole may amount to more than the sum of all its parts, of course.

Mr. Hecht: Yes, but a number of zeros still do

(Testimony of Kay Norris.)

not add up to one, and if there was not a company representative there it still does not bring any knowledge to the company.

Mr. Hecht: I am not going to move to strike anything that was said by Stanberry, I'm not going to move to strike anything that occurred on the meeting of September in Mr. Railey's office, but I insist that the testimony of this witness, where there was no representative of the company [377] present should be stricken as prejudicial.

Mr. Rowell: Now, furthermore, Mr. Examiner, one of the defenses in this case is that the action of the Union was because of——

Mr. Hecht: I am not making any such defense.

Mr. Rowell: Well, all right. But the defense is made by another party.

Mr. Hecht: If it is stipulated that this testimony is not binding on the Respondent——

Mr. Royster (interposing): I have entered into no such stipulation.

Mr. Hecht: All right. I make a motion, Mr. Examiner, and I want a ruling on that motion, to strike.

Mr. Rowell: Do you want to strike something from the record which you admit is material on some other aspect of the case?

Mr. Hecht: I don't care if it is material on some other aspect of the case, but it is prejudicial to this Respondent, and I move to strike.

Trial Examiner Ruckel: Motion denied.

(Testimony of Kay Norris.)

Cross Examination

By Mr. Hecht:

Q. Mrs. Norris, you testified that you distributed AF of L literature throughout the plant, or rather, at the plant? A. Yes, sir. [378]

Q. Will you take a look at Respondent's Exhibits 1 to 14?

A. (Examining documents.)

Q. Did you recognize any of those bulletins as having been distributed by you, or copies of them?

A. Well, I have distributed—

Q. (Interposing) For instance, the one marked Respondent's Exhibit 1?

A. Well, I don't know the dates. I don't know now.

Q. It is possible that you could have distributed some or most of them? A. Oh, yes, yes.

Q. And did Mr. Wood, or Mr. Altman, or Mr. Railey, or Mr. Stanberry, or any of the foremen ever stop you from distributing any of these pamphlets?

A. No, they didn't stop me, but I got some dirty looks from them.

Q. All right. What do you describe as a dirty look? We might get it into the record.

Trial Examiner Ruckel: Well, let's not get into that.

You distributed them in the plant?

The Witness: Yes, I did.

Q. (By Mr. Hecht): Did Mr. Railey, Mr. Alt-

(Testimony of Kay Norris.)

man, Mr. Stanberry, or Mr. Carter, or any one of the foremen tell you to take off your AF of L button?

A. Only Mr. Wood the day he told me I shouldn't have worn [379] it or I wouldn't have got into trouble.

Q. Did he tell you to take it off? A. No.

Q. All right. Mrs. Norris, you have identified this pamphlet, Board's Exhibit No. 12?

A. Yes, I identified it.

Q. You have read it all?

A. Well, I read it—I imagine I read it all at the time, but I haven't just now.

Q. Did anything contained in this pamphlet cause you not to wear your AF of L button?

Mr. Royster: I object.

Trial Examiner Ruckel: What was the question?

(The question referred to was read by the reporter.)

Mr. Rowell: That is immaterial, Mr. Examiner.

Trial Examiner Ruckel: Objection sustained. She testified she wore her button all the time.

Q. (By Mr. Hecht): Mrs. Norris, did you attend a meeting or a hearing on December 17, 1945, at some place called the Green Room in Alameda County, California?

A. I appeared, yes.

Q. You appeared there. Was that in response to charges made against you by the ILWU?

A. It was.

(Testimony of Kay Norris.)

Q. And did you enter a so-called plea of some sort? [380] A. I pleaded not guilty.

Q. Did you stay there for this trial or hearing?

A. I did not.

Q. You walked out? A. I did.

Q. And you subsequently were advised by the ILWU that you had been expelled from the ILWU?

A. About three months previous to the meeting of the 17th.

Q. That you had been expelled?

Trial Examiner Ruckel: Well, suspended, wasn't it, the first?

The Witness: Oh, suspended.

Q. (By Mr. Hecht): Did you get any notice of any sort from the ILWU up to December 17, 1945? A. I did, to appear.

Q. After December 17? A. No; before.

Q. I am asking, did you get any notice after December 17, 1945? A. I did not.

Q. You got no communication of any sort?

A. I got nothing.

Mr. Hecht: I see. That is all.

Mr. Edises: Off the record for a moment.

Trial Examiner Ruckel: Off the record. [381]

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Edises): Mrs. Norris, did you stay away from work along with the other employees during that work stoppage of August 1 to August 3?

A. I did.

(Testimony of Kay Norris.)

Q. Were you aware of the ILWU's no-strike pledge during the war? A. I was not.

Q. You were not?

A. I never knew that they even said any such thing.

Q. Uh-huh. Were you aware that the labor movement in the United States, both AF of L and CIO, had pledged not to engage in strikes during the war?

Mr. Royster: Object.

Trial Examiner Ruckel: She may answer.

Mr. Royster: She has already testified—oh, excuse me. You ruled. Go ahead.

Trial Examiner Ruckel: She may answer.

A. Well, no.

Q. (By Mr. Edises): You were not aware of it?

A. No.

Q. Did you approve of the strike that the Colgate employees engaged in on August 1 to 3?

A. I beg your pardon? [382]

Mr. Edises: Will you read the question, please?

(The question referred to was read by the reporter.)

Mr. Royster: I am going to object to the question again. I don't think it is material, whether she approved or not.

Trial Examiner Ruckel: She may answer.

Mr. Hecht: It is material.

Mr. Rowell: Did the Examiner rule on it?

(Testimony of Kay Norris.)

Trial Examiner Ruckel: Did you approve of it? Did you take part in it?

The Witness: Yes, I did.

Q. (By Mr. Edises): You did approve of it?

A. Yes.

Q. Were you aware that this country was still engaged in war with Japan at that time?

Mr. Rowell: Now, Mr. Examiner, this process of inquiry is certainly prejudicial and immaterial. If the claim is made that the reason why these people were discharged was because they went on strike, I suppose that it has been already ruled that that can be shown, but to belabor the witness as to whether she knew we were in the war, and the necessity for prosecuting the war is far afield and away from this case.

Mr. Edises: I realize it is natural for counsel to want to object to questions which may hurt his case, but it is nevertheless relevant. [383]

Mr. Rowell: It doesn't hurt our case at all.

Trial Examiner Ruckel: I will sustain the objection. I suppose everyone knows that we were at war at that time.

Mr. Edises: I don't know, your Honor.

Mr. Hecht: Mr. Examiner, I think it is relevant to this extent: the Examiner mentioned at the outset of this hearing that it was a matter of practically judicial notice, this no-strike pledge of the ILWU. The witness appears to have been in a vacuum, except for the things she has heard on September 1, and I think we should be able to

(Testimony of Kay Norris.)

test her memory as to whether a war was going on, and other events, except September 1, 1945.

Mr. Edises: May I answer that, Mr. Examiner: that if this witness was not aware of the very widely publicized no-strike pledge of her own union it is entirely possible she did not know there was a war going on at the time. If so, it may be that she was innocently disciplined by the ILWU.

Mr. Rowell: What a peculiar statement, obviously not made in good faith, Mr. Examiner.

Trial Examiner Ruckel: Objection sustained.

Let's don't play with the witness. There was a war on, as she doubtless knew.

Mr. Rowell: You might ask whether the CIO knew whether there was a war on when they laid off these valuable and long [384] employed employees of this valuable company.

Mr. Edises: You bet we knew there was a war on.

Trial Examiner Ruckel: Strike this whole colloquy from the record.

Q. (By Mr. Edises): Now, you testified about changing unions. When did you change unions?

A. August 3. I mean—yes, August 3 I signed my pledge card to join the AFL, Local 233.

Q. That is the AFL Chemical Workers Union?

A. Chemical Workers Union.

Q. And were you a member of the Employees Welfare Association? A. I was.

Q. You were. And did you accept the program of the Employees Welfare Association?

(Testimony of Kay Norris.)

A. I did.

Q. Prior to the AF of L coming into the plant were the employees in the habit of wearing their CIO buttons?

A. No. We never saw a CIO button until all of this trouble came up and then the CIO officials came out and started to issue us buttons, and we were told that we had to wear them. But for a couple of years you didn't hardly see a CIO button.

Q. The CIO buttons were available, however, were they not?

A. Where? I don't know even where we could have gone and got one. [385]

Q. Were you in the habit of attending your CIO Union meetings?

A. No. Well, I was ill.

Q. So you did not attend the meetings, is that right? A. I did not.

Q. For how long did you not attend such meetings?

A. The year of 1943 I was in the hospital three different times, I didn't attend a meeting, but the CIO forced me by letter to pay all my dues. I paid the CIO my dues by Bank of America checks.

Q. When did you stop paying your dues?

A. I never did. I kept getting these letters that I was going to get kicked out of the Union if I did not pay them. Yet, I was in the hospital three different times.

Trial Examiner Ruckel: Did you ever attend a CIO meeting?

(Testimony of Kay Norris.)

The Witness: Yes, I have.

Q. (By Mr. Edises): Did you attend the meeting of the Employees Welfare Association on July 31, 1945? A. I did.

Q. You did. Did you concur in the actions taken by that meeting?

A. I—can you put that some other way? I am not——

Q. Well, I mean did you go along with——

A. (Interposing) I went right along with them. [386]

Q. What was done at the meeting?

A. Yes, sir.

Q. Now, what was your purpose in joining the AF of L Chemical Workers? What did that signify to you?

Mr. Royster: I think I will object to that, Mr. Examiner. I don't see the materiality of it.

Trial Examiner Ruckel: Do you care to state the materiality of this?

Mr. Edises: It has a certain materiality, but I would prefer—if the answer does not establish its relevance and it cannot be connected up with the issues, I would concede the appropriateness of a motion to strike, rather than disclose my purpose on cross examination.

Trial Examiner Ruckel: We will recess for 10 minutes.

(A short recess was taken.)

(Testimony of Kay Norris.)

Trial Examiner Ruckel: Objection sustained to the last question.

Mr. Royster: We have reached a tentative stipulation during the off-the-record conference, Mr. Examiner, and, perhaps, it would be best to put it in now, even though it breaks into this witness' testimony.

Trial Examiner Ruckel: All right, sir.

Mr. Royster: It is hereby stipulated by and among counsel for the Board, the Respondent, the Intervener, and the AF of L, that all of the individuals named in the complaint [387] who have not already testified, with the exception of Rose Schneider, Calixto Rigo, Caetano Pereira, attended the meetings of July 30, July 31, and August 2, 1945, and concurred in the actions taken at these meetings.

It is further stipulated that these individuals wore AF of L buttons in the plant, that they engaged in other AF of L activity, that they participated in the work stoppage beginning at noon on July 31, and ending the morning of August 3, 1945, that they knew of the ILWU's no-strike pledge for the duration of the war, and that the following individuals plead guilty to a charge made by the CIO Union that they had participated in a war-time strike in violation of the ILWU's no-strike pledge: Glenn Hixon, Martin Heppler, Thomas Azevedo, Manuel Souza, Robert Ashworth, Felix Denkowski, Vincent Barboni, Alden Lee, John

(Testimony of Kay Norris.)

Perucca, Manuel Munoz, Ann Cerrato, Rose Ros, Ina Mae Paige, and Nick Tate.

Mr. Rowell: I would like to suggest an addition to the stipulation, that the individuals referred to——

Trial Examiner Ruckel (interposing): Couldn't this be off the record?

Mr. Edises: Couldn't this be off the record? We haven't even discussed this yet.

Mr. Rowell: Yes, off the record.

Trial Examiner Ruckel: Off the record. [388]

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Do you gentlemen stipulate to what has been dictated so far?

Mr. Rowell: Yes, I so stipulate.

Mr. Royster: The Board stipulates.

Mr. Hecht: So stipulated.

Mr. Edises: The ILWU so stipulates.

Trial Examiner Ruckel: Now, is there anything further you want to stipulate to?

Mr. Royster: Not at this moment, Mr. Examiner.

Trial Examiner Ruckel: Are you ready to proceed with the witness?

Mr. Royster: Ready.

Trial Examiner Ruckel: Further questions by the Board or by the Intervener?

Mr. Royster: I believe Mr. Edises was examining, was he not?

Mr. Edises: Yes, I was examining.

(Testimony of Kay Norris.)

I think, Mr. Examiner, that in view of the stipulation it will not be necessary to ask any further questions of this witness.

Trial Examiner Ruckel: Further questions by the Board?

Mr. Royster: Just one has occurred to me, Mr. Examiner.

Redirect Examination

By Mr. Royster:

Q. On the date you were last employed by the Respondent, Mrs. Norris, were your dues paid up in the ILWU?

A. My dues were paid up to October. November would have been my next dues.

Mr. Royster: That is all.

Mr. Edises: Wait a minute.

Trial Examiner Ruckel: Further questions?

Mr. Rowell: I think I will have her identify this rejected exhibit, Mr. Examiner.

Trial Examiner Ruckel: Which?

Mr. Rowell: The statement read at that so-called union trial. Here it is, Petitioner's No. 1 for identification.

Q. (By Mr. Rowell): Mrs. Norris, at that attempted or so-called trial by the union on December 17 did you read that statement, showing you Petitioner's Exhibit 1 for identification?

A. (Examining document) I read it.

Q. You read it on behalf of individuals who

(Testimony of Kay Norris.)

did not plead guilty to the charges as the Board's attorney just said?

Mr. Hecht: Mr. Examiner, the witness answered that no one representing the Respondent was present at this trial or hearing, and I object to any further questioning or testimony.

Mr. Rowell: I haven't offered it in evidence.

Trial Examiner Ruckel: No; it is a rejected exhibit. [390]

Mr. Edises: We will object to the question in that the last question was leading and suggestive.

Trial Examiner Ruckel: Sustained.

Q. (By Mr. Rowell): You read it on behalf of——

Mr. Edises (interposing): I object to that. Its very form shows that it was a leading question.

Trial Examiner Ruckel: On whose behalf did you read that exhibit?

The Witness: On all of us.

Trial Examiner Ruckel: Who is "all of us"?

The Witness: That had received letters from the ILWU to attend the trial.

Q. (By Mr. Rowell): Well, subsequent, after you got through reading that statement, did a certain group of individuals walk out and not stand trial? A. Yes.

Mr. Edises: Now, I object to this evidence. The AF of L has raised the point that they regard the proceedings of these trials as irrelevant to any of the issues. We intend later, as a matter of fact, to offer in evidence, for what it may be worth, the

(Testimony of Kay Norris.)

entire transcript of the proceedings at those trials and the formal documents which followed upon them. Now, I submit that that is the best possible evidence of anything that went on at these trials.

Trial Examiner Ruckel: She may state whether or not [391] she and the others walked out or not. She stated that they did.

Mr. Hecht: As a matter of fact, she already answered that on my examination, Mr. Examiner.

Trial Examiner Ruckel: Yes, she has already answered it.

Mr. Rowell: All right. No further questions.

Trial Examiner Ruckel: That is all.

Mr. Edises: Just a moment. There was another question asked after I completed my examination, he went into a new subject, and I may want to question about that.

Mr. Rowell: It was not a new subject, Mr. Edises. She testified on your examination——

Trial Examiner Ruckel (interposing): Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Recross Examination

By Mr. Edises:

Q. Mrs. Norris, when was the last time you paid dues to the ILWU?

A. I don't know for sure, but I have a check

(Testimony of Kay Norris.)

stub at home. I think it was April I paid four months.

Q. In April you paid four months?

A. 1945. No, I wouldn't say for sure, but I have got a check stub at home that had come back that the ILWU had cashed. [392]

Q. After you started to—after you joined the AF of L, did you pay any dues into the CIO?

A. No because—

Q. (Interposing) Well, now, just a minute.

Mr. Rowell: Let her finish the answer.

Mr. Edises: I am not interested in her reasons. I didn't ask that question.

Trial Examiner Ruckel: She has answered the question. It was "No"?

The Witness: "No."

Redirect Examination

By Mr. Rowell:

Q. Why didn't you pay up your dues?

Mr. Edises: I object to that as calling for an opinion and conclusion of the witness.

Trial Examiner Ruckel: She may state it.

A. I had been paying dues a whole year, and I was ill. I was told that I am not supposed to pay dues when I am ill, and I have three records stating I was in the hospital. So I talked to my Stewards about it. Then went to the Union, and the Union, in the place of giving me back all of the

(Testimony of Kay Norris.)

dues I had paid in, they only allowed me, I think, six months.

Q. (By Mr. Rowell): Were you paid up on September 1, were your dues paid up?

A. So that brought my dues, what they credited me brought [393] my dues up—they gave me a credit of six months, that brought my dues up to November, paid up to November.

Q. 1945? A. Yes.

Mr. Rowell: No further questions.

Mr. Edises: Let me get this straight.

Recross Examination

By Mr. Edises:

Q. You testified that you did not pay any dues to the CIO after you joined the AF of L, is that correct?

A. Well, they wouldn't take them.

Mr. Edises: Now, Miss Reporter, will you please read back her testimony on that point?

Trial Examiner Ruckel: Your answer now is they would not take them?

The Witness: They would not take any money.

Mr. Edises: Will you read back her testimony on that point?

The following testimony was read by the reporter as follows:

“Q. Mrs. Norris, when was the last time that you paid dues to the ILWU?

“A. I don't know for sure, but I have a

(Testimony of Kay Norris.)

check stub at home. I think it was April I paid four months.

“Q. In April you paid four months?

“A. 1945. No, I wouldn't say for sure, but I have got a [394] check stub at home that had come back that the ILWU had cashed.

“Q. After you started to—after you joined the AF of L, did you pay any dues into the CIO? A. No.”

Mr. Edises: That is all I wanted.

Q. (By Mr. Edises): Now, may I see your dues book, please? A. (Handing book.)

Q. Now, you testified the last time you paid was in May, you paid four months at that time?

A. April, around April.

Q. In April?

A. I said I didn't know for sure, I would have to look at this check stub to see. I know I paid four months at this time.

Q. Around April? A. Yes.

Q. And that was the last time you paid any dues into the CIO? A. Yes.

Q. And the CIO wouldn't take your dues after that, isn't that right?

A. The CIO refused my November and December dues.

Q. Yes. In other words, the next time you tried to pay dues into the CIO they wouldn't take them, is that right? [395]

A. I was out, suspended.

(Testimony of Kay Norris.)

Q. Just answer the question.

A. The last time they refused my dues.

Mr. Edises: I see. That is all.

Mr. Rowell: No questions.

Trial Examiner Ruckel: That is all.

Mr. Royster: Well, may the witness have her book back?

Mr. Edises: Oh, yes, sure. Oh, may I ask this witness another question?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Edises): Now, this book which I hold in my hand is your CIO dues book, is it not?

A. It is.

Q. And I ask you if this does not show that the dues for May, June, July, August, September, and October were paid in one lump sum at the same time?

A. (Examining book) From May until October was what they had deducted me. From January to April is what I had written them a check for, the four months, from January to April.

Q. Now, the question is whether this book does not show that your dues for May through October were paid for, whether in the form of cash or credit, in one lump and at one time?

A. Yes, sir.

Q. Now, when was the last time that you attempted to pay dues into the CIO? [396]

A. I called Emma, the Secretary of the CIO, and asked her if they would accept my dues, and she says, "No."

(Testimony of Kay Norris.)

Trial Examiner Ruckel: When?

Q. (By Mr. Edises): When?

A. I called her in November, the end of—my dues came due in October, and I called her around Thanksgiving in November.

Q. Of 1945?

A. '45. And she said, "No," that they would not accept my dues because I was suspended.

Q. And when was your employment terminated at Peet's? A. When I was——

Q. When did you stop working at Peet's?

A. September 1.

Mr. Edises: No further questions. (Handing book to witness.)

Mr. Rowell: No questions.

Mr. Royster: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: As long as this matter of paying dues is being made an issue——

Mr. Edises: Well, we didn't bring it in.

Mr. Rowell: Let's go off the record.

Trial Examiner Ruckel: Off the record. [397]

(Remarks outside the record.)

Trial Examiner Ruckel: Let's proceed. Call the next witness.

Mr. Royster: Calixto Rigo.

CALIXTO RIGO

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, Mr. Rigo?

A. Calixto Rigo, 1232 Talbot Avenue, Berkeley, California.

Q. Mr. Rigo, where were you, or rather, were you working from July 23 to August 6, 1945?

A. That was my vacation period.

Q. And your answer is that you were not working?

A. That is right.

Q. On August 31, 1945, did you come to the Respondent's plant?

A. No, sir. August 31?

Q. August 31?

A. Yes, sir.

Q. And tell us what happened there?

A. Well, it was 7:15 in the morning, I was ready to go to work, and Mr. Gleichman stopped me and handed me a letter.

Q. Where was this? [398]

A. About—say about 50 feet from the gate.

Q. 50 feet from the gate. You were on your way to work?

A. About 50 feet.

Q. Did Mr. Gleichman say anything to you?

A. Well, he told me, "Here is a letter for you, and you are fired. You cannot work here any more." And that, "You go to your A. F. of L. friends to help you now."

(Testimony of Calixto Rigo.)

Q. Were your dues paid up in the ILWU at that time?

Mr. Hecht: Just a moment.

Trial Examiner Ruckel: Just a moment.

Mr. Hecht: Mr. Examiner, may I make a motion to strike the testimony of the witness as to something that occurred 50 feet away from the gate of the plant and at which conversation there was no representative of the company present?

Mr. Royster: Well, Mr. Examiner, of course this evidence doesn't show that the company knew what Mr. Gleichman said on this occasion, but I submit that it has value to indicate the reason why Mr. Gleichman, a representative of the ILWU, would not permit this man to enter the plant.

Mr. Hecht: The reason doesn't bind us. It has no materiality in the charge against us.

Trial Examiner Ruckel: Motion denied.

Mr. Edises: Well, I want to enter my objection to this question on the ground that it does not prove or tend to prove any of the issues in the case. [399]

Trial Examiner Ruckel: Which question now do you mean?

Mr. Edises: This last question.

Trial Examiner Ruckel: As to the payment of dues?

Mr. Edises: As to the payment of dues.

Trial Examiner Ruckel: As I understand the pleadings, it is not an issue.

Mr. Royster: Well, may it be understood then, by counsel for all the parties, that there is no con-

(Testimony of Calixto Rigo.)

tention here on behalf of anyone that any of the persons named in the complaint were delinquent in their dues to the ILWU at the time that they were suspended?

Mr. Hecht: I will stipulate to this extent:

Mr. Edises: Wait a minute. I don't see how you can stipulate.

Mr. Royster: He can stipulate to anything.

Mr. Hecht: I will stipulate that we did not know that, or rather, that no information was given to us as to whether the men had paid or had not paid their dues.

Trial Examiner Ruckel: I imagine that might be included in the other stipulation.

Do the other parties stipulate, agree to the stipulation as stated by Mr. Royster?

Mr. Edises: No, we can't stipulate to the fact. What we can stipulate—and I think this is all Mr. Royster needs to have—we will stipulate that the ILWU is not contending [400] in this case that the union's disciplinary action in regard to the complaining parties was based on non-payment of ILWU dues.

Mr. Royster: That was my stipulation as I thought I dictated it. That is agreeable to me.

Trial Examiner Ruckel: Your stipulation was they were not delinquent. He says he does not know whether they were.

Mr. Royster: I said with respect to our contention, but that is agreeable to me.

(Testimony of Calixto Rigo.)

Mr. Edises: Do you want to read that back, please?

Mr. Royster: Your stipulation?

Mr. Edises: Yes.

(The stipulation referred to was read by the reporter.)

Mr. Royster: That is agreeable for the Board, and I so stipulate.

Mr. Hecht: I will accept that stipulation, too.

Mr. Rowell: I will accept it also.

Mr. Royster: That is all the questions I have of Mr. Rigo.

Trial Examiner Ruckel: Any further questions by the A. F. of L.?

Mr. Rowell: None.

Mr. Hecht: I have no questions.

Trial Examiner Ruckel: Any questions by the Intervener?

Cross-Examination

By Mr. Edises:

Mr. Rigo, were you a member of the Employees Welfare Association? Did you join that?

A. No, sir.

Q. Did you join the A. F. of L.?

A. Yes, sir, on August 8.

Q. On August 8? A. That is right.

Mr. Edises: That is all.

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

We will recess until 1:45 this afternoon.

(Whereupon, at 12:00 M. a recess was taken until 1:45 P.M. of the same day.) [402]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:45 P.M.)

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Royster: Call Robert Ashworth.

Mr. Hecht: Mr. Royster, before you call Mr. Ashworth, we have Mr. Railey, the Vice President of the company, whose name you have heard mentioned in this hearing before, and he is leaving for the East tonight.

Will you agree that he be put on out of order as a company witness at this time?

Mr. Royster: Yes, sir.

Mr. Hecht: Is that agreeable to you, Mr. Rowell?

Mr. Rowell: Yes.

Mr. Edises: No objection.

Mr. Hecht: Will you take the stand, Mr. Railey?

B. W. RAILEY

called as a witness by and on behalf of the Colgate-Palmolive-Peet Company, respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hecht:

Q. Will you state your name for the record, Mr. Railey? A. B. W. Railey, R-a-i-l-e-y. [403]

Q. And what is your business or occupation?

A. Vice President of the Colgate-Palmolive-Peet Company.

Q. Since what time have you held that position?

A. Since 1938.

Q. So I take it you were the Vice President in the month of July, 1945? A. Yes, sir.

Q. And up to and including September 1, 1945?

A. Yes, sir.

Q. Where are your offices located?

A. The Pacific Coast office at Berkeley, California.

Q. All right, sir. And were you at your office on July 28, 1945? A. No, sir.

Q. Were you at your office on July 30, 1945?

A. Yes, sir.

Q. What time do you usually arrive at work?

A. Around eight in the morning.

Q. And you arrived at that time on July 30, 1945? A. Yes, sir.

Q. Did anything unusual occur on July 30, 1945?

A. Well, during the day, or shortly after lunch,

(Testimony of B. W. Railey.)

our Superintendent, Mr. Altman, came to my office with the communication that he had received from the ILWU No. 6, I believe is the official title, in which they had asked us [404] to suspend five employees of the company.

Q. Did Mr. Altman show you that letter?

A. He did.

Q. I show you Board's Exhibit No. 3 which purports to be a copy of a letter dated July 30, 1945, on the stationery of the ILWU, addressed to your company.

Will you look at it and tell me if that is the letter you have reference to?

A. (Examining Document): Yes, that is the letter.

Q. That is the letter. And are the five persons named in the letter the ones you had reference to?

A. Yes, sir.

Q. And what occurred after Mr. Altman showed you that letter?

A. We took the letter and went back to Mr. Altman's office where there were awaiting us certain representatives of the CIO.

Q. Can you name them?

A. My recollection is that Mr. Heide was one of them, Mr. Gleichman, Mr. Duarte, and whether there were others I am not too sure, but I am sure of those three.

Q. There were five present, you say?

A. I am not sure of the number.

(Testimony of B. W. Railey.)

Q. Did a conversation ensue between you and the representatives of the CIO? [405]

A. It did.

Q. Will you relate to the best of your recollection the gist or substance of that conversation?

A. We told these people that this was—came as a very great surprise to us, literally a bombshell, we knew nothing about what it was about, or any reason why these men should be suspended, and protested the thing because we told them they had been loyal employees as far as we were concerned, and we had no charges against them. We were quickly reminded of our contract with the CIO which specified—which carried a paragraph to the effect that all employees must be in good standing with the union to work at our plant.

Q. Was the contract produced?

A. It was called to our attention, this particular paragraph that I refer to.

Q. Was the contract itself or a copy of the contract—

A. (interposing): A copy of the contract was read at the time.

Q. I will show you Board's Exhibit 7 and have you look at it. It purports to be a copy of a contract between the Respondent and the ILWU, and see if you can pick out the clause you have reference to.

A. (Examining contract): Well, of course, I don't have reference to the number of it. I can find it.

(Testimony of B. W. Railey.)

Q. I think I will save you time and tell you it is on the [406] first page, Mr. Railey.

A. (Indicating): That is the clause that I am referring to.

Q. Will you specify the number of the clause?

A. Section 3.

Q. You discussed that clause with the representatives of the CIO? A. Yes, sir.

Q. Did any further conversation or discussion ensue after that?

A. These gentlemen that represented the CIO told us that these men must be discontinued immediately. They told us that they had sent a notice of their suspension to each man by registered mail, each man that was involved. They told us if we didn't discharge them they would.

Mr. Royster: I didn't get that answer, the latter part of it.

(The answer referred to was read by the reporter.)

Q. (By Mr. Hecht): What else happened, Mr. Railey?

A. It was finally agreed that we should call these five men into the office. When they came in——

Q. (Interposing): At this point you might name those five men, Mr. Railey.

A. There was Mr.——

Mr. Royster: They are in the letter.

Mr. Hecht: Yes. [407]

(Testimony of B. W. Railey.)

The Witness: Mr. Marshall, Mr. Moreau, Mr. Haynes, Mr. Smith— May I look at this again and check my memory? (Examining document): And Mr. Luchsinger.

Q. (By Mr. Hecht): And you called them into your office? A. We did.

Q. And what occurred then?

A. When they came to our office the CIO officials handed each of them a carbon copy of a letter which they stated had been mailed to their homes. These gentlemen looked at the letters briefly and crushed them in their hands and stuck them in their pockets and walked out of the office.

Q. No conversation between the five men?

A. No conversation.

Q. Between the five men and the CIO officials?

A. No.

Q. Any statement to you by these five men?

A. Not at the time, no.

Q. Did anything unusual outside of that occur on July 30? A. No.

Q. Now, calling your attention to July 31, 1945, did you go to your office on that day?

A. Yes, sir.

Q. At about the same time, eight o'clock?

A. About eight o'clock in the morning.

Q. Did anything unusual occur on July 31, 1945?

A. When I arrived at the office there was a committee of our employees waiting in the office to see me, and asked if they could have an interview.

(Testimony of B. W. Railey.)

Q. Can you name that committee?

A. There was Mr. Sherman, Mr. Olsen, Mr. Thompson, and Mr. Lonnberg.

Q. What occurred?

A. I took them into my office and had a talk with them there. They told me that the object of their call was to ask us to put these five suspended employees back to work. We again, or at that time told them that we——

Q. (Interposing): By “we” who do you mean, Mr. Railey?

A. Well, I am referring to the company when I say “we.” I told them that we had a contract to live up to, and the contract stated unless they were in good standing with the union they couldn’t work in the factory, and that was a problem between the CIO and these employees.

Q. Did they say anything to what you have just stated?

A. They told us that if we didn’t reinstate these people and put them back to work immediately that they wouldn’t be responsible for the consequences.

Q. Did you ask them what they meant by that?

A. No, I didn’t go into detail.

Q. Let me ask you, was Mr. Altman present at this meeting?

A. He came in shortly after the meeting started.

Q. Was any statement made by the committee-men to Mr. Altman?

A. Well, I don’t believe direct to Mr. Altman.

(Testimony of B. W. Railey.)

I think they made the same statement to him they made to me.

Q. I see. Any further conversation between you and these gentlemen?

A. Well, yes, we told them we were sorry about the whole thing, all we were interested in was running our plant. And when Mr. Altman came into the office he told me that the officials of the CIO were in his office, which is in another part of the factory. I proposed that we invite the CIO officials over to our office and see if we couldn't iron out this trouble with this negotiating committee. This they agreed to, and the CIO officials came over to our office. We told them why they had been asked to come over, and from there on the conversation was largely between the CIO officials and this negotiating committee.

Q. Was this a free-for all, or had either side spokesmen?

A. I would say it was more or less a free-for-all. As I recall it, Mr. Lynden, the President of the CIO, and Mr. Sherman of this negotiating committee, did most of the talking.

Q. Can you relate the gist of this conversation or talk between the two men?

A. Well, to boil it down, the CIO people told this [410] negotiating committee that these people would have to stand trial on the charges against them, they could not work until those charges were disposed of, and they repeatedly reminded them, reminded this negotiating committee of the oaths

(Testimony of B. W. Railey.)

that they took when they joined the CIO and the consequences of a violation of those oaths, and assured them that they had done everything they could to get increases for the employees of the company, pointed out that the wages were frozen, nothing they could do about it, nothing that the company could do about getting an increase. And at one stage of the meeting the Negotiating Committee, without any further ado, walked out.

Q. About what time would you say that was?

A. Oh, I would guess it was probably about 9:30 in the morning.

Q. Did you continue the conference with the CIO officials? A. Yes, we did.

Q. What was the subject of the conference?

A. We told them that our factory the afternoon before had been a very— in a state of turmoil due to the fact of a lot of conversation and visiting, and union people going through the plants, and people couldn't get their work done. And we asked them if they wouldn't leave the grounds, and they said, "Well, they would leave if this negotiating committee and the— or rather if the five Stewards that had been [411] suspended would leave. And we immediately went out to the factory and located the five Stewards, and I believe all of the members of the negotiating committee were with them at the same time, told them the request that we had made of the CIO officials, and told them we were going to make the same request of them because

(Testimony of B. W. Railey.)

the CIO officials certainly wouldn't leave if they didn't leave, and they finally agreed to leave.

Q. Anything else unusual occur on July 31, 1945?

A. Well, excepting the result of this statement, they wouldn't be responsible for the consequences. Our factory worked until noontime of that day, and when the noon hour was over there was quite a large number of our people that did not return to work.

Mr. Royster: I move to strike that, as a result of the consequences.

Mr. Hecht: That may go out.

Q. (By Mr. Hecht): The fact is that your people did not come to work?

A. That is right.

Q. What else occurred on that day, if anything?

A. In the afternoon I received a telephone call from Mr. Thompson.

Q. Can you place about the time of it, Mr. Railey?

A. Probably around three o'clock, approximately three o'clock, I would say, asking me if I would come to the Finnish Hall [412] at Berkeley where our employees were holding a meeting. I decided to go, and Mr. Sherman presided at this meeting. They discussed the possibility of our taking the suspended people back to work again.

Q. Were you asked that directly by anyone?

A. We were ask if we would take them back to work.

(Testimony of B. W. Railey.)

Q. Who asked you?

A. I am sure it was put to us by Mr. Sherman who was the Chairman of the meeting.

Q. Yes.

A. They said that was the object of the meeting.

Q. What reply did you make to that request?

A. We referred again to the contract, this paragraph, Section 3.

Q. Was the contract discussed at the meeting?

A. I told them I didn't have a copy of the contract, but I was sure they were familiar with that paragraph, and several of the people who were there said they had copies of the contract, and that sentence was referred to, yes.

Q. You mean that section was referred to?

A. That section, the sentence particularly, that sentence of the section which stated they must be in good standing with the union.

Q. Any other requests made of you at this meeting in addition to that? [413]

A. Oh, they asked for suggestions, or some way that they could work it out so these people could go back to work, but we had no suggestions to make, and again told them that was their— between the employees and the union.

Q. I take it that you left the meeting at some time?

A. Yes, very shortly.

Q. Let me ask you specifically: While you were present at this meeting were any formal reso-

(Testimony of B. W. Railey.)

lutions offered from the floor, passed upon and adopted?

A. I don't recall anything in the way of a formal resolution. They did ask for anyone— invited anyone to make statements that wanted to make a statement, and several people did get up and say that they didn't think anyone should go back to work until they could all go back to work. There was no— there might have been a general feeling that they wouldn't go back, but there was certainly no formal vote or no formal resolution taken.

Q. While you were present? A. No.

Q. And I take it the meeting was still in progress when you walked out? A. That is right.

Q. Let me ask you, Mr. Railey: There has been testimony here in the record (and it is in the record) that a notice was posted on July 28 that called for a meeting of the [414] Employees Welfare Association. Have you ever seen that notice?

A. No.

Q. You haven't? A. No.

Q. Did you ever see it posted?

A. No, sir.

Q. As a matter of fact, you were not in the office July 28? A. I was not there.

Mr. Rowell: He couldn't very well have seen it then.

Mr. Hecht: Just to be sure.

Q. (By Mr. Hecht): I hand you Board's Ex-

(Testimony of B. W. Railey.)

hibit No. 4, Mr. Railey. Will you look at it and tell me if you have ever at any time seen that?

A. (Examining document)

Q. Of course, outside of the time you saw it in my office at lunch time today?

A. No, that is the first time I saw it, in your office today.

Q. Mr. Railey, did you make any attempt to find out the reason why the persons you have named were suspended?

A. Did we make any attempt?

Q. You yourself ever make any attempt?

A. No. [415]

Q. Did you ask the CIO officials?

A. I don't recall of ever asking them, but we were sure that that was— they had the right to suspend anyone for many different reasons.

Mr. Rowell: Now, I ask that that be stricken, Mr. Examiner. It is a matter of his legal conclusion, about being sure they had the right.

Mr. Hecht: No; that is what they told him.

Trial Examiner Ruckel: They told him, assured him that they had the right to suspend—

Mr. Rowell: I didn't understand the answer that way. Is that the way it was?

Mr. Royster: Yes.

Mr. Rowell: He testified, to my hearing, that he never asked them.

Trial Examiner Ruckel: He said he didn't ask them but they told him.

The Witness: The question came up of these

(Testimony of B. W. Railey.)

five men. He told us that they could be suspended for many different reasons and they had to stand trial before they could go back to work.

Q. (By Mr. Hecht): I see. As a matter of fact, the majority of your employees did not work from about noon, July 31, to the morning of August 3, 1945? A. That is correct. [416]

Q. Did you during that period get information from any source as to the nature of the controversy, or what was said to be the nature of the controversy? A. No.

Q. Did you read the Daily Press?

A. Yes.

Q. Was there anything in the Daily Press with reference to this controversy?

A. The racial question came up in the papers, many of the papers that I read.

Q. That was papers published during this period.

A. During the shutdown period.

Q. Did anybody apply to you among the nine named for reemployment during the month of August, outside of the instances you have already related? A. No, no.

Q. Were you at the plant on September 31, 1945?

Mr. Royster: September 1, I think you mean.

Mr. Hecht: September 30. No, pardon me. I have the wrong date entirely.

(Testimony of B. W. Railey.)

Q. (By Mr. Hecht): On or about September 1, 1945?

A. Yes.

Q. Did anything unusual occur on September 1, 1945?

A. Yes. We had a letter presented to us listing a group of additional people that would be suspended at the factory, [417] some 17 or 18 people.

Q. Did that letter come directly to you?

A. No. I think it came to the superintendent of the factory.

Q. To Mr. Altman, that is?

A. I think so.

Q. I hand you Board's Exhibit 13, a copy of a letter dated September 1, 1945, on ILWU stationery, addressed to your company. Will you look at it?

A. (Examining document): Yes, this is the letter.

Q. Did you make inquiry from anyone for the reasons of the suspension of these people other than what is stated in the letter?

A. No, sir.

Q. And no one told you?

A. No, sir.

Q. Upon receipt of that letter, or upon being shown that letter, what did you do?

A. Mr. Wood, Mr. Altman, and myself called them into my office.

Q. Called whom?

A. This group of 18 that are listed in this letter.

Q. Named in Board's Exhibit 13?

(Testimony of B. W. Railey.)

A. Yes, sir. And told them of the receipt of the letter, and what the alternative was. [418]

Q. You called the men in?

A. That is right, men and women.

Q. Was it a meeting? A. Yes.

Q. Was it an orderly meeting?

A. I thought so.

Q. All right. Do you know Mr. Albert Zulaica?

A. I might know him, but I don't know him by name.

Q. I am going to ask you specifically—withdraw that. It has been testified at this hearing, Mr. Railey, that at this meeting of September 1, 1945 you stated in the presence of the persons present, "You must remember that I did not want you to join the union in the first place, and you must take the consequences."

Now, I ask you categorically, did you make any such statement?

A. No, we didn't make such a statement. Mr. Wood presided at this meeting, and on one occasion, possibly more, he told them that the union was of their own selection.

Q. Did you yourself make such a statement?

A. No, sir.

Q. It has been further testified, Mr. Railey, at the same meeting of September 1, 1945, you stated substantially the following:

"We asked you not to have a union, we fought you at it, [419] now you have it, you must be satisfied."

Did you make any such statement?

(Testimony of B. W. Railey.)

A. Well, I couldn't have made such a statement because we didn't fight them at any time.

Mr. Royster: Not responsive.

Mr. Hecht: I think it is responsive.

Trial Examiner Ruckel: He said he didn't make any such statement.

Mr. Royster: I move to strike the answer.

Mr. Hecht: The statement that was made this morning by Mrs. Norris was, "We didn't want you to have a union. We fought you on it." I repeated it to the witness. The witness said he couldn't have made such a statement because "we never fought them."

Mr. Royster: That is right. He said he couldn't have made such a statement.

Q. (By Mr. Hecht): Did you make such a statement? A. I did not.

Q. By the way, Mr. Railey, do you know Mr. Harvey Howard?

A. Only by telephone conversations.

Q. You have never met him personally?

A. No, sir, not to my recollection.

Q. Did Mr. Howard in any conversation you had with him ever request permission for A.F. of L. representatives to call at the plant for the purpose of furthering the campaign of the [420] A.F. of L.?

A. Not in that way. He did ask to see us on a number of occasions, but we declined to talk to him at the time.

(Testimony of B. W. Railey.)

Q. But he didn't ask for permission for A.F. of L. representatives to go through the plant?

A. No, sir, not me.

Mr. Hecht: That is all.

Mr. Edises: May I ask a couple of questions of this witness?

Trial Examiner Ruckel: Yes.

Mr. Edises: I don't care what the order is.

Q. (By Mr. Edises): Mr. Railey, this purports to be a copy of a telegram that was sent to the company on or about the date it bears.

Do you recall receiving such a telegram?

A. (Examining document): No.

Q. Do you know who received the telegram?

A. No. We have a record of having received the telegram in our office, but what happened to it I do not know, and can't find anyone who admits having received it up to date.

Q. In other words, the telegram was received but you can't find your copy?

A. According to our files it was received there.

Q. But now my present question is simply whether, to the best of your recollection, that is a copy of the telegram? [421]

A. Yes, I do recall on our own copy it had four names rather than two at the bottom.

Q. Yes.

A. Lonnberg and Olsen, so that couldn't—

Q. (Interposing): Now, apart from that detail it is, to the best of your recollection, an accurate copy of the telegram? A. Yes, it is.

(Testimony of B. W. Railey.)

Q. Now, I ask you whether prior to the time that you received this telegram you had any knowledge that your employees were withdrawing from the C.I.O. or forming another labor organization?

A. No, we had no knowledge.

Mr. Edises: That is all.

Cross Examination

Q. (By Mr. Royster): Now, Mr. Railey, you testified that on July 30 you protested to the ILWU the requested suspension of these five Stewards?

A. Yes.

Q. Now, how did you make that protest, what did you say?

A. Well, I couldn't tell you what I said. I can only give you a general idea of our feeling, which I can well remember, and what went on at the time. We might be classed as babes in the woods on a thing like this, but it was something entirely new to us, and entirely unexpected, and when this letter was [422] brought to me by Mr. Altman I admit that I was completely non-plussed. I didn't know what to do, or anything about it. At that time I didn't even recall the wording of the contract, which they maintained, and which our best advice afterwards seemed to bear out, that they had a right to suspend people, and as long as they were under suspension, or not in good standing with the Union, that they couldn't work there.

Q. Well, what did you say to the ILWU people by way of protest?

(Testimony of B. W. Railey.)

A. We told them we had no reason for discharging these people as far as we were concerned. It was brought to our attention that we had nothing to do with the matter.

Q. Did you ask them to reconsider their action at all?

A. We pleaded with them not to take action because we needed work, and we need products, a very vital business, and there was no feeling on our part in connection with it.

Q. And you stated that this was an experience new to you? A. That is right.

Q. During the time that you have been at that plant and during the time that this ILWU contract has been in effect, is it true, then, that this is the first occasion where anything like this has happened?

A. No, the first occasion anything bordering on this had happened. I think there had been cases where other people had not been allowed to work there for one reason or another, [423] maybe an individual.

Q. Individual instances?

A. Not a group where they selected five Stewards.

Q. And these five Stewards that were selected were the only Stewards in the plant as far as you knew, isn't that so? A. That is right.

I think that is our complete list of Stewards, isn't it, or was?

(Testimony of B. W. Railey.)

Trial Examiner Ruckel: This was all the Stewards?

The Witness: That was all we had at the time, wasn't it, Mr. Altman?

Mr. Altman: That is right.

The Witness: Five Stewards represented in the entire group.

Q. (By Mr. Royster): Did Mr. Altman tell you on July 30 that a notice had ben posted on the bulletin board on the previous day advertising a meeting of the Employees Welfare Association?

A. No, he did not.

Q. Did you know on the morning of July 30 that such a meeting was scheduled to be held on the afternoon of that day?

A. I had no intimation of it of any kind, no knowledge.

Q. When did it come to your knowledge that such a meeting had been held, or was being held?

A. When they telephoned me in the middle of that afternoon [424] asking me to come up and attend the meeting.

Q. Now we are talking about different dates, Mr. Railey. You received an invitation by telephone to attend a meeting on July 31. I believe that was your testimony. Is that not correct?

A. Well——

Q. I am not trying to confuse you.

A. No, there is some question in my mind about the date, whether it is July 30 or 31.

(Testimony of B. W. Railey.)

Q. Well, perhaps we can fix it this way: The meeting to which you received an invitation, and which you attended, took place on the afternoon after the employees had left the plant?

A. Well, then, it was July 31.

Q. Now, when did you gain knowledge that there was a meeting on the afternoon of the preceding day, that is, on July 30?

A. Well, when our employees failed to come back to work.

Mr. Hecht: I don't think he testified he had knowledge of the meeting of July 30.

Mr. Royster: I don't think he did either.

Mr. Hecht: No.

Mr. Royster: I am trying to find out now.

Mr. Hecht: Yes.

Mr. Royster: I think we are still talking at cross [425] purposes.

Q. (By Mr. Royster): The testimony shows so far that there was a meeting of your employees on the afternoon of July 30? A. Yes.

Q. On the following day four committeemen, whom you named, came to your office and interceded on behalf of the Stewards. When their intercession was fruitless, at noon of that day the employees walked out, and then held another meeting, which was the meeting that you attended?

A. On the 31.

Q. I am asking you now with reference to this meeting on July 30. When did you learn that such a meeting had been held?

(Testimony of B. W. Railey.)

Trial Examiner Ruckel: Well, ask him if he did learn it.

Q. (By Mr. Royster): Or did you learn that such a meeting had been held?

A. I didn't know too much about the meeting, but I know our Superintendent reported to me a lot—a large number of employees didn't come back to work, they all went away in automobiles at noon that day, and we were told, or some way got the information that they had gone to attend a meeting some place.

Q. That is on the 31st?

A. No; that is on the 30th. [426]

Trial Examiner Ruckel: What day of the week was the 30th, do you recall?

The Witness: A Monday.

Mr. Hecht: The 30th was Monday.

Did you hear about any meeting on the 30th, on Monday?

The Witness: Well, no official notice. As I say, they all drove away. I say "all"; a large number of them did. When they didn't come back, we were told they were holding a meeting some place.

Mr. Rowell: Well, now, it is perfectly proper to tell the witness what the dates were because we stipulated to it.

Mr. Hecht: Yes. It has been stipulated, it has been testified here, Mr. Railey, there was a meeting at 4:30 on the 30th.

Did you ever hear about that meeting at 4:30 on the 30th?

(Testimony of B. W. Railey.)

The Witness: I couldn't identify such a meeting, either the time or couldn't certify that there was a meeting, either one.

Mr. Hecht: All right.

Q. (By Mr. Royster): Of course, I was not asking for certification. I was asking you to tell me when, or if you ever heard of such a meeting, and I believe you testified that you are not sure you did.

A. Only as I say, that when the people went away the report [427] went around they had gone to attend a meeting on this Monday, July 30. I didn't check up to see what the time of the meeting was, or where it was, or who was involved.

Q. Now, it was on Tuesday, July 31, that the four men came to your office and asked that the Stewards be replaced or reinstated. Did any one of them tell you that they had been selected at a meeting of employees? A. No.

Q. During the time that these four men were in your office, did you not receive a copy of a telegram which Mr. Edises showed to you?

A. As I testified before, I had never seen the telegram. It was news to us.

Q. And it is your testimony now that on the morning of July 31 you did not receive a copy of that telegram, which is Board's Exhibit No. 6?

A. That is right.

Q. Now, you testified that these ILWU representatives on the 30th day of July, after reminding you of the contract terms, told you that if the

(Testimony of B. W. Railey.)

Company did not discharge the Stewards the ILWU would, is that correct? A. That is correct.

Q. Does the ILWU discharge the people at your place, Mr. Railey?

A. No, but they do tell us who can work there and who [428] cannot.

Q. Well, what meaning did you gather from this, that if you did not discharge them the ILWU would?

A. I gathered if we did not want to tell them they were under suspension that they would, in other words, it referred to a suspension.

Q. Now, again on July 31 when the four Stewards were in your office, is it not a fact— not four Stewards,—

A. The negotiating committee.

Q. The four on the negotiating committee were in your office, is it not a fact those four men were told they would be suspended from the ILWU?

Trial Examiner Ruckel: Told by whom?

Mr. Royster: Told by the ILWU representatives? A. That I couldn't say.

Q. (By Mr. Royster): You didn't hear that?

A. I don't think they intimated such a thing at the time, but that I couldn't—there may have been a suspension on the road to those four at the time for all I know.

Q. Well, wasn't it said in your presence by ILWU representatives that "You four are going to be suspended"? A. I don't recall that.

(Testimony of B. W. Railey.)

Q. Yes. There was a pretty acrimonious exchange between the ILWU and the four committeemen during part of that meeting, was there not, Mr. Railey? [429]

A. I don't know what is the right word to use for it. As I say, they were reminded of their oath and, of course, Mr. Sherman, who was speaking for the negotiating committee, accused the Union of failure to get increases for the men and for the people working there. And Mr. Lynden for the Union did bear down to the extent that they had taken an oath, and they had failed to observe it, and he pointed out what happened to a traitor for the United States, and they were a traitor to their Union, that they had the right to discipline their people. In fact, he said— this was when the war was still on— he said they had many times been called upon to discipline people, keep them working. And he said even in the shipyards they had been called upon to discipline people outside of working hours who were inclined to drive fast, or drink, or something like that, to try to keep them working, because the government said, "Unless you straighten your man out he can't work here." And it was a defense of the CIO by Mr. Lynden, naturally, and their policies, and resentment on the part of Mr. Sherman, who was a former Business Agent, and whether he was disappointed or what I couldn't say, but at any rate, he was obviously not in sympathy with CIO.

Q. Well, it became quite apparent as this con-

(Testimony of B. W. Railey.)

versation took place that there was a schism developing in the ranks of the CIO, of the ILWU, did it not, at the plant? [430]

A. It certainly was, at least between the CIO and certain individuals. Whether it was, what percentage——

Q. Well, I believe you testified (and if you didn't you can correct me) that these four— strike that.

I won't press that question.

Trial Examiner Ruckel: During this meeting was the AF of L mentioned by anybody?

The Witness: No.

Q. (By Mr. Royster): Was the Employees Welfare Association mentioned by anyone?

A. No. If I may bring it up, I don't think the AF of L came into it until some time later.

Trial Examiner Ruckel: How much later?

The Witness: Well, I don't know. Maybe Mr. Wood would have a better recollection of the date than I have.

Trial Examiner Ruckel: In what form did it come to you?

The Witness: Well, it didn't come to us in any form, except when Mr. Howard got into the thing. Mr. Howard was not in the original— in other words, according to my understanding——

Trial Examiner Ruckel: Who is Mr. Howard?

The Witness: He was the man who was presumed to represent this group at one time. I be-

(Testimony of B. W. Railey.)

lieve he is the head of one or two unions on the other side of the Bay, or was at that [431] time.

Q. (By Mr. Royster): Now, sometime early in August, perhaps the 5th, 6th, 7th, or 8th, along in there, the Respondent was advised, was it not, that a petition had been filed by the AF of L, seeking certification as bargaining representative of the employees at Peet's? A. Yes.

Q. And is it true that after you learned of the filing of this petition that it became apparent that there was campaigning in the plant by both sides?

A. Yes, sir.

Q. Each seeking to secure the favor or support of the employees? A. That is right, yes, sir.

Q. And that condition continued for some time?

A. Yes, sir.

Q. What was the position of the company with respect to this campaign, Mr. Railey?

A. Well, we certainly were not enthusiastic about it in any respect, either on the part of the CIO or any group that was apposed to the CIO, because it certainly interfered with our production.

Q. Did you have any favor for either side?

A. No, I wouldn't say that we have.

Q. Did you ever advise the employees that you stood [432] neutral?

A. There was no official notice of any kind, no, but we certainly tried to, in all of our discussions among ourselves and everything, we took the position that it didn't make any difference who represented the employees to us.

(Testimony of B. W. Railey.)

Q. That was in your discussions among your management group, you mean?

A. That is right.

Trial Examiner Ruckel: Does the record show when this petition was filed?

Mr. Hecht: I think it does.

Mr. Royster: Yes, it does. The complaint alleges it and I believe the answer admits it, and, incidentally, I plan to introduce the decision and direction of election.

Trial Examiner Ruckel: What was the date of the filing of the petition, do you recall?

Mr. Royster: I believe it was August 3rd, but I will have to check that.

Mr. Hecht: August 3rd is correct.

Mr. Royster: August 3rd.

Mr. Hecht: Pardon me, Mr. Royster. When you say August 3rd, it was filed with the Board August 3rd.

Mr. Royster: Yes, it was filed with the Board on August 3rd.

Trial Examiner Ruckel: Well, let us go further and [433] stipulate what happened. Was there a hearing?

Mr. Royster: Yes. That is set forth in the complaint too. I guess there would be no objection to stating now what happened and see if everybody is in agreement with it.

The petition was filed with the Board on August 3, 1945. On August——

(Testimony of B. W. Railey.)

Mr. Hecht: May we go off the record, Mr. Examiner?

Trial Examiner Ruckel: I would like this on the record.

Mr. Hecht: Just for one moment.

Trial Examiner Ruckel: Off the record, please.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Royster: Well, may it be stipulated by the parties that on August 3, 1945, the AF of L filed a petition in Case 20-R-1486; that on August 8, 1945, the company, the ILWU and the AF of L met at the office of the Board in San Francisco and held a preliminary conference on the petition; that on August 14, 1945, notice of hearing on the petition was issued, and that this notice of hearing was received by the company on August 17; that on August 22, a hearing in the representation case was held in San Francisco; that on September 26, 1945, a decision and direction of election was issued by the Board, and on October 16, 1945 an election in pursuance to the decision and direction of election was conducted? [434]

Trial Examiner Ruckel: What was the result of the election?

Mr. Royster: The result of the election was as follows: The approximate number of eligible voters; 390——

Mr. Hecht: 300— how many?

Mr. Royster: 390.

Trial Examiner Ruckel: 390.

(Testimony of B. W. Railey.)

Mr. Royster: Void ballots, 6; votes cast for the AF of L, 126; votes cast for the ILWU, 181; votes cast against participating labor organizations, 1; valid votes counted, 308; challenged ballots, 44; valid votes counted plus challenged ballots, 352.

Mr. Rowell: Now, Mr. Royster, that total number of 390 includes some service men who were employed there at the time, doesn't it?

Mr. Royster: I don't know whether it does or not.

Mr. Rowell: Does it not also include some discharged— these discharged employees as well as those who took their places?

Mr. Royster: I assume that it does, but I don't see that it is material.

Trial Examiner Ruckel: I don't either, but did it include the——

Mr. Rowell: (Interposing): Well, the figure is slightly swollen from the previous—— [435]

Mr. Royster (Interposing): Well, there was an increase.

Mr. Hecht: The plant got back the full complement. There were some service men that were working part time. The displaced employees voted, so that probably accounts for the 390.

Trial Examiner Ruckel: Did the individuals named in the complaint vote?

Mr. Royster: They cast challenged ballots, Mr. Examiner, almost all of them, perhaps all of them. I don't know.

(Testimony of B. W. Railey.)

Well, I think we have come to the end of the stipulation.

Trial Examiner Ruckel: Yes. May the facts as set forth by counsel be stipulated to?

Mr. Rowell: Yes.

Mr. Hecht: Yes.

Mr. Edises: As set forth in Mr. Royster's stipulation without the various interpolations?

Trial Examiner Ruckel: Well, naturally, yes.

Mr. Edises: So stipulated.

Mr. Rowell: So stipulated.

Mr. Hecht: So stipulated.

Trial Examiner Ruckel: And subject to the official record anyway.

Mr. Edises: Yes. I suggest we introduce into the record the official direction of election and tally.

Mr. Royster: Well, I wish to make one statement here [436] which, of course, is not a stipulation by anybody. Then I will offer the decision and direction of election. The statement is merely to clear up the record on this particular point, that challenged ballots were not sufficient in number to affect the result of the election, but that the election was protested by the AF of L, and that there has been no final determination of the objections filed.

Mr. Examiner, I offer in evidence as Board's exhibit next in order the decision and direction of election in Case No. 20-R-1486.

(Thereupon the document above referred to

(Testimony of B. W. Railey.)

was marked Board's Exhibit No. 14 for identification.)

Mr. Hecht: May we go off the record for a moment?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Is there any objection to Board's 14 being received?

Mr. Rowell: No, no objection.

Mr. Hecht: No objection.

Mr. Edises: That is the decision, is it, Board's 14 is the decision?

Trial Examiner Ruckel: Yes. It will be received.

(Thereupon the document heretofore marked Board's Exhibit No. 14 for identification was received in evidence.) [437]

Mr. Edises: How about the tally? Have you got a copy of the tally?

Mr. Royster: It is in the stipulation or rather—yes, it is in the stipulation.

Mr. Hecht: You want the official tally?

Mr. Edises: Well, I guess that is enough.

Trial Examiner Ruckel: Are there any further questions of the witness?

Mr. Royster: No further questions by the Board.

Trial Examiner Ruckel: Any questions by the AF of L, Mr. Rowell?

Mr. Rowell: Yes, I have one or two. I am little bit confused by this telegram situation.

(Testimony of B. W. Railey.)

Q. (By Mr. Rowell): Mr. Railey, showing you Board's Exhibit 6, namely, the telegram sent by the Employees Welfare Association, can you tell me when that telegram first came to your attention?

A. It first came to my attention day before yesterday, I think, when we were looking it up.

Q. Well, now, when Mr. Edises was questioning you didn't you identify this as a true copy of a telegram that you had received?

A. Not a true copy, but the wording is approximately the same.

Q. Well, with what original document were you comparing it [438] in your memory?

A. With our file copy at the Berkeley office which we found in the files over there. It is not a true copy to this extent: the file copy that we have was addressed with my name on the top, it carried four names at the bottom instead of two.

Q. Now, furthermore, your testimony as to the issues involved in this trouble, certainly the presence of the AF of L in the picture cleared up your doubts as to what were the issues, didn't it?

Mr. Hecht: I object to that question.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): The conversation between this committee of four and the CIO union officials, in substance Mr. Sherman's position was that he and other employees were dissatisfied with the conduct and action of the CIO union, is that right?

(Testimony of B. W. Railey.)

Mr. Hecht: Well, he stated the facts, Mr. Rowell. There is no point in asking for his conclusion now.

Trial Examiner Ruckel: Well, counsel has the right to cross examine. The witness stated I think, or said that the CIO was reproached for not having obtained increases in wages and things like that.

Mr. Rowell: That was only preliminary.

The Witness: As far as the negotiating committee was [439] concerned, all they were asking us for was to reinstate these five people.

Q. (By Mr. Rowell): I know, but in this conversation between the negotiating committee and the CIO Union in your presence I believe you testified that among other thing there was an expression of dissatisfaction by Mr. Sherman as to the wage standards of the CIO union and such things as that?

Mr. Edises: Well, I will submit an objection, that the testimony speaks for itself as to what he said.

Trial Examiner Ruckel: This is preliminary.

Mr. Rowell: This is preliminary, that is all.

Q. (By Mr. Rowell): Is that in substance what Mr. Sherman said, or do you wish to put it in your own words?

A. No, I wouldn't say that he made the flat statement that he— in the way you put it.

Q. Well, put in your own words then.

(Testimony of B. W. Railey.)

A. Sometime during the discussion the question of advances, increases in wages came up, and the CIO people explained to Mr. Sherman that they were powerless to get any increases under the Stabilization Act and so forth.

Q. Yes.

A. And they had gotten all for Colgate employees that anyone could get.

Q. Well, now, that conversation came up, you say. Now, did Mr. Sherman bring it up? [440]

A. No, I think the CIO people brought it up in their defense of the CIO handling of the Colgate situation.

Q. Well, now, you say they were making a defense against something. There must have been some sort of an accusation made. What I am trying to get at is that. What did the committee of four say to the CIO people?

A. Well, frankly, I don't recall that they started the discussion in that at all.

Q. You mean this discussion was all one-sided, just the CIO people talking?

A. No, it was not one-sided, but the CIO's argument with Mr. Sherman was over the question of reinstating these five people, and reminding him of the contract and his knowledge of the Union constitution, and what the CIO stood for, and what they had done for Colgate employees. Maybe "defense" is a bad word, but, in other words, that was——

Q. (Interposing): Now, what did anybody of

(Testimony of B. W. Railey.)

the committee say to the CIO people as to what the CIO had done or failed to do?

A. Oh, I don't recall that they said anything that was——

Q. (Interposing): You seem to be able to recall half of the conversation and only one side of it?

A. No, I——

Mr. Edises (Interposing): Now, I object to that kind of characterization. [441]

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: I am just asking for the cooperation of the witness.

Trial Examiner Ruckel: Let's find out if there was another side of the conversation.

Q. (By Mr. Rowell): What charges did the CIO—I withdraw that.

Did the CIO people say that Sherman was misleading the employees?

A. No. When we brought these people in there—you asked for my cooperation. I will tell you again that our interest in the thing was to keep our plant running and to see if we could get them together in connection with the suspension of these five people and go to work. And the CIO then at length explained their entire position, their constitution, and so forth, to Mr. Sherman.

Q. I realize that, Mr. Railey, but you have told me that in addition the CIO defended their actions so far as obtaining wage increases for the employees and matters of that kind. It only occurs to me

(Testimony of B. W. Railey.)

that there must have been a discussion back and forth between the two groups, one side said, "No, you didnt' do it," and the other side said, "Yes, you did do it"?

A. I can appreciate it naturally would occur to you that there are two sides to it, but I have no recollection in [442] mind along that line.

Q. Well, is your recollection better as to the matter of the turmoil in the plant to which you objected? You mentioned that there was a certain amount of turmoil and conversation and talking back and forth between the employees which was causing the trouble.

Can you elaborate on that? Can you state what the nature of the turmoil was?

A. Well, I can say this: that our stewards during that time were doing no work, and a lot of people in the plant were not doing any work. The CIO people had their men going through the plant checking on who was apparently in good standing or who was not, but there was just too much turmoil in the factory to suit us, and you could walk through the factory and see groups talking here and groups talking there and no work being done.

Q. Did you hear what the groups were talking about? A. No; no.

Q. Did you obtain information from other people in the company as to what they were talking about? A. No.

Q. What you saw, however, indicated that there

(Testimony of B. W. Railey.)

was at least a difference of opinion amongst certain employees as to a union?

Mr. Hecht: I object to that as calling for the conclusion [443] of the witness.

Trial Examiner Ruckel: Objection sustained. This was just prior to the election, this period of turmoil?

Mr. Rowell: No.

The Witness: No, it was not just prior to the election. It was largely in the day before they discontinued work, before noon time; largely that morning.

Q. (By Mr. Rowell): That would be on July 30, 1945? A. July 30.

Q. And when you attended this meeting at the Finnish Hall (and it has been stipulated that it was July 31, 1945), while you were present, was there any action, formal or otherwise, taken to indicate to you the employees' support of the case of these five shop stewards? Was there a show of hands, for example?

A. I don't know anything—

Mr. Edises (Interposing): Well, now, I object to that as immaterial. What is the significance of whether there was any showing of support or not?

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the reporter.)

Mr. Edises: Furthermore, there is no dispute that the meeting was called.

(Testimony of B. W. Railey.)

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: No further questions. [444]

Trial Examiner Ruckel: Mr. Hecht, do you have anything further?

Mr. Hecht: Yes, Mr. Examiner.

Redirect Examination

By Mr. Hecht:

Q. Mr. Railey, what is manufactured at your plant in Berkeley?

A. Laundry soap, toilet soap, and glycerin are the principle products.

Q. You were manufacturing glycerin during this period? A. Yes, sir.

Q. And that, I take it, is a war implement?

A. I beg your pardon?

Q. Is that a war implement?

A. Very much so.

Q. Well, do you remember what your production was at the time?

A. Well, it varied for months, but I would say we produced between four and five hundred thousand pounds a month.

Q. Did this work stoppage interfere with your production of glycerin? A. Bound to.

Q. It did interfere with it? A. Yes.

Mr. Hecht: I think that is all.

Mr. Rowell: One or two questions come to my mind on that [445] score.

(Testimony of B. W. Railey.)

Recross Examination

By Mr. Rowell:

Q. You say when a request was made of you by the CIO for the discharge of these employees you resisted it? A. Yes.

Q. And what was your reason for resisting that request of the CIO? I believe you stated it. I wish you would state it again.

Mr. Edises: It has already been asked and answered. I object to it on that ground.

Trial Examiner Ruckel: I believe he said he protested, not resisted.

Q. (By Mr. Rowell): Now, isn't it a fact that in acceding to the request of the CIO it interfered with your production in the plant likewise?

Mr. Hecht: Objection.

Trial Examiner Ruckel: Objection sustained. He said there was a contract.

Mr. Rowell: Well, I mean it is certainly just as immaterial for Mr. Hecht to bring out that this work stoppage interfered with the production, and then to prevent me from bringing out that the discharges of these old competent employees likewise caused an interference with war production, and that was caused by the CIO union. [446]

Trial Examiner Ruckel: There was no objection to Mr. Hecht's question, or I might have sustained the objection to it.

Mr. Rowell: That is the reason I didn't object to it.

(Testimony of B. W. Railey.)

Mr. Edises: Mr. Rowell wants us to get into the chicken and the egg argument. ILWU's position is there is no provocation for engaging in strikes during wartime.

Trial Examiner Ruckel: Any further questions?

Redirect Examination

By Mr. Edises:

Q. I would like to ask Mr. Railey whether during the period of the war there had been any other strikes, any strikes of any kind at your plant prior to this episode?

A. No, sir.

Q. Do you know what the ILWU's position was on strikes during wartime?

Mr. Royster: Object. What difference does it make whether he knew or not?

Trial Examiner Ruckel: Objection sustained.

Mr. Hecht: Mr. Examiner, I may interpolate here that the question here has been whether or not the company had knowledge of the reasons why these men were being suspended. I maintain that if Mr. Railey knew——

Trial Examiner Ruckel: (Interposing) Yes, I concede possible materiality to the question. I change my ruling. He may answer if he is aware of it.

What was your question again, please?

Mr. Edises: Would you mind reading the question?

(The question referred to was read by the reporter.)

A. I do.

(Testimony of B. W. Railey.)

Q. (By Mr. Edises): What was that position?

A. There should be no work stoppage, no strikes, no lockouts.

Q. You have a number of colored employees at your plant, do you not? A. Yes, sir.

Mr. Rowell: That is objected to as immaterial.

Trial Examiner Ruckel: The answer may stand.

Q. (By Mr. Edises): And the ILWU has supplied colored workers as well as white workers to your plant, have they not? A. Yes, sir.

Mr. Rowell: Objected to as immaterial.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): And, to your knowledge, has there ever been any discrimination by the ILWU colored workers?

A. None whatever at our plant.

Q. After this difficulty started, did you hear from any source that the issue of discrimination, of racial discrimination, was present, was in the picture?

Mr. Rowell: That is objected to on the grounds it is [448] hearsay.

Trial Examiner Ruckel: He may answer.

A. All that I knew is what I read in the newspapers.

Q. (By Mr. Edises): Did you read of such a charge in the newspapers? A. Yes, sir.

Mr. Rowell: Mr. Examiner, this is really far-fetched.

Trial Examiner Ruckel: What is the objection?

(Testimony of B. W. Railey.)

Mr. Rowell: He read it in the newspapers, and they are offering that as testimony.

Mr. Hecht: On direct he testified that he read about the controversy at the plant in the newspapers, and it was one of the statements made in the newspapers.

Trial Examiner Ruckel: We want to know what was in his mind. There may have been none such, so far as the fact of the matter is concerned, but if he believed it, why, that would be the material thing.

Q. (By Mr. Edises): Were you aware, Mr. Railey, that there had been charges filed against or rather, made against the stewards at the plant that they were inadequately fulfilling their duties as stewards?

A. I did not know what the charges were against the stewards.

Q. You did not know what the charges were?

A. No. [449]

Q. Did you know that there were some such charges? A. No, sir.

Mr. Edises: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: No questions.

Mr. Rowell: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

We will recess for ten minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Call the next witness.

Mr. Royster: Thomas Azevedo.

THOMAS AZEVEDO

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, Mr. Azevedo?

A. Thomas Azevedo, 1326 88th Avenue, Oakland.

Mr. Hecht: Mr. Royster, before we go farther, would this witness be one subject to that stipulation that went in this morning?

Mr. Royster: Yes, sir.

Q. (By Mr. Royster): Did you come to the Respondent's [450] plant on August 31?

A. Yes, I did.

Q. Will you tell me what happened when you approached the plant?

A. Well, when I came to the gateway there was about 12 of the union men there, and three standing in front of the radiator of the car, and two on each side, on the running board, and Gleichman, he handed me a letter and said, "Here is this letter," and said, "Take it back to your union, see if they can put you back to work, you are so crazy about them."

Q. Did you enter the plant—

Mr. Hecht: I make the formal motion I have

(Testimony of Thomas Azevedo.)

been making, Mr. Examiner. May that testimony be stricken on the ground it is not binding on the Respondent, no executive or supervisory employee of respondent's being present, and not occurring in respondent's plant.

Trial Examiner Ruckel: You may have a standing objection to the entire line of testimony.

Mr. Hecht: Very well. Is that agreed and stipulated to, gentlemen?

Mr. Royster: Well, no.

Mr. Rowell: No.

Trial Examiner Ruckel: You may have a standing objection and exception and the objection is overruled. [451]

Mr. Hecht: All right.

Q. (By Mr. Royster): Now, did you enter the plant?

A. I couldn't, the gate was locked. It wasn't locked, but Mr. Carter was holding the gate closed.

Q. Mr. Carter? A. Mr. Carter.

Q. Is that Mr. Cecil Carter?

A. Cecil Carter, that is right.

Q. Assistant superintendent?

A. That is right.

Q. Since August 31 have you worked for the company? A. No, sir.

Q. Did you go to the respondent's plant on September 4, 1945? A. That is right.

Q. And did you speak to anyone there?

A. Well, I went in there to pay my hospitalization.

(Testimony of Thomas Azevedo.)

Q. And did you have a conversation with anyone?

A. Well, Mr. Wood came out to the gate when I was coming home.

Q. And did you have a conversation with Mr. Wood?

A. Yes, I did. As I walked out of the gate he asked me, "Did you get everything you wanted?" I said, "No, I got what I wanted except my job."

He said, "Well, why don't you go up to the union hall [452] and straighten yourself out?", and I said, "Well, I wouldn't have a chance if I did go up there. I was guilty before I was proved guilty." He said, "No, you go up there and ask for a trial, and I will come up there and see that you get a fair trial. If you would have kept your mouth shut in the first place you wouldn't be in the mess that you are in now."

Mr. Royster: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Hecht: Just a moment, if you don't mind, Mr. Examiner. Mr. Wood can't hear very well, and could we have the testimony referring to Mr. Wood read back by the reporter?

Trial Examiner Ruckel: Will you read it back please, the last bit applying to Mr. Wood?

(The testimony referred to was read by the reporter.)

Trial Examiner Ruckel: Any further questions for the A F of L?

Mr. Rowell: No, no questions.

(Testimony of Thomas Azevedo.)

Trial Examiner Ruckel: Cross examine.

Mr. Hecht: I have no questions.

Mr. Edises: No questions.

Mr. Royster: You are excused, Mr. Azevedo.

(Witness excused.)

Mr. Royster: We will call Vincent Barboni.

VINCENT BARBONI

called as a witness by and on behalf of the National Labor [453] Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, please.

A. Vincent Barboni, 1625 Francisco Street.

Mr. Hecht: Mr. Examiner, may we ask that the witnesses speak up?

Trial Examiner Ruckel: You will keep your voice up as loud as possible.

The Witness: Yes.

Q. (By Mr. Royster): Were in Mr. Railey's office on September 1, 1945, Mr. Barboni?

A. Yes, I was.

Q. Will you tell us what took place there?

A. Well, Mr. Railey and Mr. Wood read that paper off with all the names.

Q. Telling you of your suspension?

A. Yes, sir.

(Testimony of Vincent Barboni.)

Q. And was there a further conversation that you heard?

A. Well, there was quite a bit of talk.

Q. And what was the talk?

A. Well, it was about these people being suspended, and why they were suspended.

Q. Well, what was said that you now recall?

A. Well, there was some talk about if we didn't wear union [454] buttons we wouldn't be where we were then.

Q. Well, was it one of the group of employees who said that? A. No, it was Mr. Railey.

Q. Mr. Railey? A. Yes.

Q. Said that if you hadn't worn union buttons you wouldn't be where you are now? A. Yes.

Mr. Royster: That is all.

Cross Examination

By Mr. Hecht:

Q. Mr. Barboni, do you know Mr. Railey?

A. Yes, I do.

Q. Did you see him here today? A. Yes.

Q. What was he doing here?

A. Well, he testified.

Q. And you are sure he said that?

A. Yes.

Q. There is no doubt in your mind about it?

A. No.

Q. What else do you remember was said?

A. Well, I don't know; Mr. Wood talked; Mr. Altman talked.

(Testimony of Vincent Barboni.)

Q. And what makes it stand out in your mind that Mr. Railey said that if you hadn't worn union buttons you [455] wouldn't be in the trouble you are in?

A. Well, it is just something, one of the things I remember.

Q. He didn't say that if you hadn't distributed you wouldn't be in the trouble you are in?

A. No, I don't remember that.

Q. He didn't say that if you had kept your mouth shut you wouldn't be in the trouble you are in?

A. Well, I have heard that, but I couldn't say just who said it.

Q. You say you heard that but you don't know who said it?

A. Yes.

Mr. Hecht: I have no further questions of the witness.

Q. (By Mr. Edises): When did you join the A F of L, Mr. Barboni?

A. Oh, it was right about the beginning.

Q. Roughly when, do you know? Can you fix it with relation to some event?

A. Well, it was about a week or so before the walkout; a week or so before the walkout.

Q. A week or so before the walkout?

A. Well, a continuous meeting, or whatever you want to call it.

Q. You are quite sure of that?

A. Well, no, but then the record would show it, the book. [456]

(Testimony of Vincent Barboni.)

Q. Well, you testified to that just a moment ago, didn't you? A. To what?

Q. That you joined the A F of L a week or two before the lockout?

A. Well, I think I was one of the first ones to join the A F of L.

Q. Well, now, just answer my question. Didn't you testify that you joined the A F of L a week or two before the lockout? A. Yes.

Q. Before the walkout?

A. Before the walkout.

Q. Now, that might be a little bit inaccurate one way or the other? A. Yes.

Q. It might be a day or two off, is that right?

A. Yes.

Q. And are you just as sure of that testimony as you are of the testimony about Mr. Railey?

Mr. Rowell: That is objected to.

Mr. Edises: That is a perfectly legitimate question, Mr. Examiner. This is cross examination. I want to test the witness' credibility. I have a right to.

Trial Examiner Ruckel: I don't think it is proper to compare and weigh one answer against some other answer. [457] Objection sustained.

Q. (By Mr. Edises): What would you say, Mr. Barboni—what would your answer be if the fact were that the A F of L didn't even come into the picture until after the walkout? Would that change your answer in any way?

A. Well, I don't know just what you mean.

(Testimony of Vincent Barboni.)

Mr. Hecht: Mr. Examiner, may we go off the record?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Mr. Edises: No further questions.

Mr. Royster, the stipulation this morning applies to this witness too?

Mr. Royster: Yes.

Trial Examiner Ruckel: Well, Mr. Railey made mention of your button. Did he say what kind of a button?

The Witness: No, but I took it for A F of L.

Trial Examiner Ruckel: He didn't say "A F of L?"

The Witness: No.

Trial Examiner Ruckel: Any further questions?
(No response.) That is all.

(Witness excused.)

Mr. Edises: Mr. Royster, could we have a stipulation as to the time that the previous witness joined the A F of L?

Mr. Royster: Barboni?

Mr. Edises: Mr. Azevedo. [458]

Mr. Royster: Oh. August 3, he told me he signed an A F of L card.

Mr. Edises: Will that be stipulated?

Mr. Royster: That is agreeable to the Board.

Mr. Edises: So stipulated.

Mr. Hecht: So stipulated.

Mr. Royster: Ann Cerrato.

ANN CERRATO

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please?

A. Ann Cerrato, 1028 62nd Street, Oakland, California.

Mr. Hecht: May we have the same instruction to this witness, please?

Trial Examiner Ruckel: Keep your voice up, please.

Q. (By Mr. Royster): Were you in Mr. Railey's office on September 1, 1945?

A. I was.

Q. What took place there?

A. Well, we went in there, and the letter was read to us that we were all—we were dismissed by the company because we were in bad standing with the union. And then there was [459] some talk about it and some questions brought up by Kay Norris and Terry Anderson and some of the other workers in there, but I didn't ask any questions myself.

Q. Well, did you hear any of the questions and were there any answers to the questions?

A. Yes. I heard one question when Kay Norris

(Testimony of Ann Cerrato.)

said whether the reason we were being laid off was because we wore the A F of L buttons.

Q. And was there any answer to that remark?

A. Well, I don't recall that there was, but according to—about the union, Mr. Railey did make the statement that they didn't want the union in there in the first place, and we had it, we got it in there, so we had to take the consequences.

Q. Now, did Mr. Wood have anything to say at this meeting?

A. Well, Mr. Altman and Mr. Railey did almost all the talking for the company.

Q. What did Mr. Wood say, and speak up loudly so we can hear you?

A. I can't remember, can't recall exactly what Mr. Wood did say.

Mr. Royster: That is all.

Q. (By Mr. Rowell): Were you there when the union was originally organized at the plant?

A. You mean the ILWU? [460]

Q. Yes.

A. We were transferred over from Local 96 to the Warehouse Union on July 1, 1941.

Q. Did you have any information as to the company's attitude toward union organization at that time?

Mr. Edises: Just a moment. I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: Well, now—well, all right, I won't press it.

No further questions.

(Testimony of Ann Cerrato.)

Mr. Hecht: I have just one question, Miss Cerrato.

Cross Examination

By Mr. Hecht:

Q. There were about 18 of you in this room?

A. There was.

Q. And since the time this incident occurred, have you had occasion to discuss with the other 18 just what happened there?

A. If I talked about it to anyone?

Q. Yes. I mean whether you conferred with Mrs. Norris or with Mr. Hellbaum or with any of the other people who were present there on September 1? Have you talked it over with them?

A. Well, we all talked about it after we got out of his office because we all went to the same place.

Q. Sure, and have you since that time talked about it again?

A. Well, off and on everybody has.

Q. And you attended that trial on September 17?

A. I certainly did.

Q. And it could be quite possible that you didn't hear some things that the other people thought they heard? That could be possible, couldn't it?

A. About what do you mean, at the trial?

Q. That is, certain things were heard by the others that you didn't hear?

A. Well, I heard Mr. Railey say that——

Q. (Interposing) I am not asking you that question. Please stick to my question, if you will.

(Testimony of Ann Cerrato.)

In other words, it is quite possible (there were 18 of you there) that you did not hear what the other 17, or the other 16, or the other 15, or the other 5 might have heard? Some things might have escaped you? A. Some of them probably did.

Q. You might have been told some of the things that escaped you; that is true?

A. I am repeating what I heard myself.

Mr. Hecht: Answer my question. Will you read my question?

(The question referred to was read by the reporter.) [462]

Q. (By Mr. Hecht): I am asking you whether you were told some of the things that you yourself didn't hear? A. I was.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Miss Cerrato, are you a member of the A F of L Chemical Workers Union?

A. I am.

Q. When did you join that union?

A. August 3, 1945.

Mr. Edises: That is all.

Mr. Royster: Thank you.

(Witness excused.)

Mr. Royster: Felix Stanley Denkowski.

FELIX STANLEY DENKOWSKI

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, please.

A. Felix Stanley Denkowski.

Q. Were you in Mr. Railey's office on September 1, 1945? A. Yes, sir.

Q. Will you tell us what took place there?

A. Well, it was quite a time before we went into Mr. Railey's office. There was supposed to be 19 members, but [463] the one was a misspelled name, he was not there.

Mr. Hecht: May we ask how the witness knows one was a misspelled name?

Mr. Royster: Oh, it is common——

Mr. Hecht: (Interposing) Because I was——

Trial Examiner Ruckel (Interposing): Just a moment.

Mr. Royster: It developed, I understand, in this meeting, Mr. Hecht.

There was a name on this letter requesting suspension of a fellow named Richards and it should have been Richmond.

Mr. Hecht: All right.

Trial Examiner Ruckel: Go ahead and tell us what happened then.

The Witness: So we waited, and finally we go to Mr. Railey's office, and we wait some more, for about 15 minutes.

Trial Examiner Ruckel: Don't tell us what didn't happen. Just tell us what happened.

The Witness: And then discussions—everybody

(Testimony of Felix Stanley Denkowski.)

started asking questions, three or four people at a time.

Q. (By Mr. Royster): Well, now, what did Mr. Railey say, if he said anything?

A. Everybody was asking Mr. Railey different questions, and why we were suspended, and Mr. Railey said, "Well, I am neutral." He says, "I am neither—the union put their charges against you," and, he said, "you brought it on [464] yourselves," and "I didn't want this trouble of a union in the first place, so you people brought it on yourselves," so that is all that Railey said.

Q. Now, did Mr. Wood say anything?

A. There was quite a few people asking Mr. Wood at the same time—I believe Mr. Wood said that if we didn't wear the A F of L buttons and didn't talk too much, why, we wouldn't get in this trouble in the first place.

Mr. Hecht: I suggest there is a conflict between your witnesses, Mr. Royster.

Mr. Royster: If so, why, the record will show it.

Trial Examiner Ruckel: Don't comment on the testimony.

Mr. Hecht: I have no questions.

Cross Examination

By Mr. Edises:

Q. Are you a member of the A F of L Chemical Workers Union, Mr. Denkowski?

A. Yes, now.

Q. When did you join the organization?

(Testimony of Felix Stanley Denkowski.)

A. Well, I joined after we had a meeting.

Q. I was not present at the meeting so I don't know when that would be.

A. Well, I don't just exactly remember when because when we had a meeting the meeting was continued, and I joined that after we had a meeting, in that time. I don't know just exactly when.

Q. Do you know whether it was around August 3rd?

A. It is something there, or afterwards.

Mr. Edises: Mr. Royster——

Mr. Royster: Yes.

Mr. Edises: Do you have a copy of the constitution of the A F of L Chemical Workers Union?

Mr. Royster: I haven't.

Mr. Edises: Would it be possible for either of you gentlemen to produce a copy of the constitution of the A F of L Chemical Workers Union?

Mr. Rowell: I think I can find one. I don't know the materiality of it.

Has anyone got an extra one around here?

Trial Examiner Ruckel: Do you want it for this witness?

Mr. Edises: Yes.

Mr. Rowell: Has anyone got one in their pocket, the constitution and by-laws of the International Chemical Workers Union?

Mrs. Norris: No, I haven't.

Mr. Rowell: I am sorry. I don't have a copy here with me. I can furnish one by tomorrow, certainly, but I don't have one here.

(Testimony of Felix Stanley Denkowski.)

Mr. Edises: Well, that will be satisfactory. Tomorrow morning?

Mr. Rowell: Yes. [466]

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I don't think it will be necessary to recall the witness. I think we can probably agree to the matter that I had in mind.

Trial Examiner Ruckel: Any further questions?

Mr. Edises: That is all.

Mr. Royster: That is all.

(Witness excused.)

Mr. Hecht: May we go off the record here for a moment?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Are there any other witnesses?

Mr. Royster: I have to check through here and see that they are on different points, Mr. Examiner.

Trial Examiner Ruckel: We will recess for five minutes.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Mr. Royster: Nick Tate.

NICK TATE

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of Nick Tate.)

Direct Examination

By Mr. Royster:

Q. Will you state your name and address [467] please?

A. Nick Tate, 1451 Blake Street, Berkeley.

Q. When was the last day you worked for respondent, Mr. Tate?

A. I think it was around August — about August 26.

Q. Were you told on August 26 (or whatever the date was) that that was your last day at work?

A. No. This day was on a Thursday, and I told the boss I wanted to take off Friday and Saturday, and he told me I could. And I got a letter from the union that I was suspended.

Q. When did you get the letter?

A. August 31.

Q. And since that time you have not been back to work? A. No, sir.

Q. Now, before you took the days off, did you have a conversation with Ed Bopp and Hack Gleichman?

A. Well, I was back there working and they would come around and wanted to examine books.

Q. Now, can you tell us when this was with respect to the time you last worked?

A. I should say about a week before I got knocked off the job.

Q. All right. Now, what was the conversation?

A. Well, Ed told me that he wanted to check my book, and I went in there and got my book, and

(Testimony of Nick Tate.)

I was just standing there and he said—he looked over to me and told—I don't know [468] if he was talking to Hack, or the whole crowd, he said, "Check in Nick Tate's book, he was one of the A F of L organizers."

Q. Now, who was present when this statement was made by Mr. Bopp?

A. Well, there was quite a few boys around there that works, and Cecil Carter; Cecil Carter and Ed Bopp and Hack Gleichman.

Q. Cecil Carter. Is he the assistant superintendent? A. Supervisor.

Mr. Royster: Supervisor. That is all.

Cross Examination

By Mr. Hecht:

Q. Do you know whether Mr. Carter heard this conversation?

A. He was standing right there.

Q. What do you mean by "standing right there"?

A. Right in the room where we was at.

Q. How large a room is it?

A. I didn't get the question.

Q. How large a room is it?

A. Oh, about this big (indicating), a little space right there, that big (indicating).

Q. Did you say anything—

Trial Examiner Ruckel: (Interposing) That doesn't tell the record anything. How big is it? 20 feet by 30 feet? [469]

(Testimony of Nick Tate.)

The Witness: About something like that.

Q. (By Mr. Hecht): They were speaking in loud voices, I take it?

A. He spoke pretty loud; he could hear it.

Q. You were sure he could hear it?

A. Yes.

Q. Did you say anything to Mr. Carter?

A. I didn't say a word to him.

Q. Did Mr. Carter say anything to you?

A. Not a word.

Q. Did Mr. Carter say anything to Mr. Gleichman? A. Not that I know of.

Q. Did he say anything to Mr. Bopp?

A. Not that I know of.

Q. What was the date of this thing?

A. I would say about a week before I got suspended.

Q. That would be a week prior to September——

A. August, August.

Q. A week prior to September 1? And you left on August 26? Would you say it was August 26 it happened, on a Thursday?

A. No, I couldn't. He didn't check my book then.

Q. You stated it happened a week before you got your letter of suspension. You had your letter of suspension September 1, didn't you?

Mr. Rowell: He testified August 31 he got——

Mr. Hecht (Interposing): All right.

(Testimony of Nick Tate.)

Q. (By Mr. Hecht): This happened a week before you got your letter of suspension, which was August 31, so could it have been August 26?

A. I got suspended August 30. I got the letter——

Q. (Interposing): On the 31st?

A. On the 31st.

Q. All right. Now, you say this conversation took place——

A. (Interposing): The third week of August, around the middle, the third week of August, I would say.

Q. The third week of August. Well, the third week of August was the week of the 20th. Is that when it occurred, some time between the 20th and the 26th?

A. Well, I couldn't tell you the exact date, when he was checking the books around there.

Q. What was it again he said you were? An A. F. of L. organizer?

A. He said I was an A. F. of L. organizer.

Q. Were you? A. Sure I was.

Q. (By Mr. Edises): Mr. Tate, may I be so bold as to ask you: Are you a member of the A. F. of L. at the present time? A. Yes, sir.

Q. When did you join the A. F. of L.?

A. August 30.

Q. August 30? [471] A. Yes, sir.

Q. 1945? A. Yes, sir.

Q. And during the third week of August you

(Testimony of Nick Tate.)

have testified that you were an organizer for the A. F. of L.?

A. Well, I was talking about the A. F. of L.

Q. What were you doing for the A. F. of L.?

A. Well, I don't know if you want to call it organizer or not, but I was just discussing the things, what the CIO had done to the shop stewards.

Q. Were you signing people up in the A. F. of L.? A. No, sir.

Q. When did you get your A. F. of L. book?

A. I didn't get an A. F. of L. book yet. I got receipts. I didn't get it.

Q. When did you start paying dues to the A. F. of L.? A. August 30.

Q. August 30. Just how did you join, what did you do?

A. I signed one of them application blanks that they——

Q. Who gave you the application blank to sign?

A. I can't recall.

Mr. Royster: I wonder if that is material, Mr. Examiner. I will object to it on the ground it is not.

Mr. Edises: Well, there is a charge here that this man was discharged on account of his membership in the A. F. of L. [472] and activities in the A. F. of L. Now, what could possibly be more material to the issues of this case?

Trial Examiner Ruckel: Let's find out when he joined, if possible.

Q. (By Mr. Edises): Now, who gave you this card to sign? A. I can't recall.

(Testimony of Nick Tate.)

Q. Where was it handed to you?

A. How is that?

Q. Where was it handed to you? Where did you sign it? Whereabouts were you?

A. At that meeting we had there August 30.

Q. At what meeting was this?

A. August 30.

Q. Where was the meeting held?

A. At Finnish Brotherhood Hall.

Q. Are you sure you are not referring to July 30? A. Oh, yes, that is it, July 30.

Q. Oh, I see. Now, you joined the A. F. of L., you say, on July 30 at this meeting where the resolution was passed that "Unless the Stewards go back to work, nobody goes to work"; is that right?

A. Yes, sir.

Mr. Rowell: If he can remember.

Mr. Edises: Now, just a minute, Mr. Rowell; just a minute! This is a very positive witness. One of the most [473] positive witnesses we have had so far.

Q. (By Mr. Edises): You are very clear on that recollection, are you?

A. Well, it is about—state that question again.

Mr. Edises: I will ask the reporter to read it.

(The question referred to was read by the reporter.)

Q. (By Mr. Edises): In other words, I just want you to be sure you know what you are talking

(Testimony of Nick Tate.)

about. Do you want to let the answer stand? Is that right?

A. No, I can't—I didn't get the question very good yet.

Q. Now, you want to take your answer back?

Mr. Rowell: Well, obviously it is not clear as to the date he joined the A. F. of L. If you want to find out, if you want to help him out, if you want to refresh his recollection by receipts and so forth, we will furnish them to you.

Mr. Edises: Let's see how good his recollection is.

Q. (By Mr. Edises): Were you ever initiated into the A. F. of L.? A. No, sir.

Mr. Rowell: That is immaterial, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): What? A. No, sir.

Q. Do you know whether anybody else was ever initiated into the A. F. of L., any of these other people? [474]

A. I don't know a thing about it.

Q. When was the last time you attended an A. F. of L. meeting?

A. I couldn't—let's see. I can't think of the date right now.

Q. Yes. As a matter of fact, you have never attended an A. F. of L. meeting, have you?

A. I never did?

Q. Yes. A. I did.

(Testimony of Nick Tate.)

Q. With the exception of that one on July 30, is that right?

A. Oh, I have attended them.

Q. Now, just wait a minute. You attended one on July 30, is that right? A. Yes.

Q. Did you ever attend another?

A. I went to the meeting—they had the next meeting on July——

Q. July 31? A. The 31st, yes.

Q. Did you ever attend any others?

A. Yes, sir.

Q. When?

A. Well, the meeting times, when they met.

Q. Well, when did they meet? [475]

A. I think it is on the first and third week of each month.

Q. You are not sure of that, are you?

A. Well, I wouldn't say for sure.

Q. And when was the last time you attended such a meeting? Did you attend any, have you attended any during February of this year?

A. I couldn't——

Mr. Royster: I will object to that. What difference does it make whether he attended any meetings in February of this year or not.

Mr. Edises: We have a right to test his recollection.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): Your answer is you don't recall? A. I don't recall.

(Testimony of Nick Tate.)

Q. Do you recall attending any in January, 1946? A. I don't recall.

Q. Do you recall attending any in December, 1945? That is the same month that Christmas comes in? A. I don't recall.

Q. Do you recall attending any in November, 1945? A. November?

Q. November, 1945? A. I don't recall any.

Q. Do you remember attending any in October, 1945?

A. Well, I went to one of them, but I couldn't tell you [476] the date when I went to the meeting.

Q. Yes. Do you remember attending any in September, 1945?

A. Well, I couldn't tell you the date.

Q. What is the number of the A. F. of L. local that you belong to? A. 233.

Q. And what is the full name of it?

A. International Chemical Workers Union.

Q. Have you got a union card, A. F. of L. Chemical Workers Union card? A. No, sir.

Q. Did you ever get one? A. No, sir.

Q. Have you got an A. F. of L. button?

A. Not in my pocket, no.

Q. Did you ever have one?

A. I have the one I had in the plant.

Q. Yes. Have you got an A. F. of L. union dues book? A. No, sir.

Q. Did you ever get one? A. No, sir.

Q. One was never issued to you?

A. No, sir.

(Testimony of Nick Tate.)

Q. What are the dues in the A. F. of L. union?

Mr. Rowell: That is immaterial, Mr. Examiner, utterly [477] immaterial.

Trial Examiner Ruckel: He may answer.

A. \$2.00 a month.

Q. (By Mr. Edises): \$2 a month?

A. Yes, sir.

Q. When did you last pay dues to the A. F. of L. Union?

A. I think it was in October, I think.

Q. That was the last time you paid dues?

A. October or November.

Q. October or November? A. Yes.

Q. You were paid through October-November. When did you pay those dues?

A. In November.

Q. In November?

A. I wouldn't say for sure.

Q. When was the first time that you paid dues in the A. F. of L.? A. The day I joined.

Q. Where does the A. F. of L. local hold its meetings?

A. In the Finnish Brotherhood Hall.

Q. At the Finnish Brotherhood Hall. Who is the President of the Local?

A. Ed Thompson.

Q. Ed Thompson. Who is the Vice President?

A. I can't think of who it is.

Q. Who is the Secretary?

A. I don't know her name.

(Testimony of Nick Tate.)

Q. Who is the Treasurer?

A. I don't know her name.

Q. Have you ever seen a copy of the constitution of the Local? A. No, sir.

Q. Were you ever a member of an organization called the Employees Welfare Association?

A. Yes, sir. Well, that is what we were supposed to be in the first place, started out with.

Q. When did you join that organization?

A. I can't recall when.

Q. As a matter of fact, it was in April, 1945, wasn't it?

Mr. Rowell: Well, now, counsel, that is an attempt to mislead.

Mr. Edises: This is cross-examination.

Mr. Rowell: It is an attempt to cross up the witness. Are you looking for the truth in this case, or are you trying to cross people up?

Mr. Edises: I am certainly looking for the truth.

Trial Examiner Ruckel: Sustained.

Mr. Edises: I won't comment on how much success I am having. [479]

Mr. Rowell: I don't think you have had any, but you are trying awfully hard.

Mr. Edises: Well, I am glad that is on the record. I think that is all.

Trial Examiner Ruckel: Any further questions?

(Testimony of Nick Tate.)

Redirect Examination

By Mr. Rowell:

Q. Mr. Tate, the A. F. of L. union issues receipts for your dues, is that right?

A. Yes, sir.

Q. It doesn't issue books? A. No books.

Mr. Rowell: No further questions.

Mr. Hecht: Subject to correction by counsel. I am going to make a motion to strike. I believe the witness, Mr. Tate, testified that in the presence of Mr. Carter, Mr. Gleichman said that he was an A. F. of L. organizer and asked to look at his dues book. I don't see the materiality of that testimony or how it is in any way part of this case, and I move to strike.

Trial Examiner Ruckel: Motion denied.

May it be stipulated what Mr. Carter does?

Mr. Carter: He will be here, Mr. Examiner. I would rather have him here and have him explain what his duties are.

Trial Examiner Ruckel: All right, sir.

Any further questions of this witness? [480]

Mr. Royster: None.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Edises: Could I have a look at that dues book or whatever it is, and examine it?

(Mr. Rowell handed the document to Mr. Edises.)

Mr. Royster: Ophelia Reyes.

OPHELIA REYES

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. State your name and address, please.

A. Ophelia Reyes, 2229 6th Street, Berkeley.

Q. Did you come to the gate of respondent's plant on August 31? A. Yes, I did.

Q. Will you tell us what happened there?

A. Well, I was going up to the gate. As I turned the corner I could see the gate and there was quite a few—there was a crowd out there, and it seemed as if they were being stopped by some of the men, the union men. And I went up there and this—I don't know who he is, but I would recognize him.

Q. Well, do you see him in the room now? [481]

A. No, he isn't in here.

Q. Have you seen him in this hearing room at any time? A. No.

Q. All right.

A. I went up to him and he asked me, "Have you got your CIO book," and I said "No." He says, "Well, you can't go in," so he says, "I could get in if I went home and brought my book up." So I stood in line a while, and I finally decided I had better do that, so I went home and I came back with my book. And I attempted to show it to him but he wouldn't look. He said I couldn't go in because I was A. F. of L.

(Testimony of Ophelia Reyes.)

Q. Well, did you get into the plant that day?

A. No, I didn't.

Q. Did you see Mr. Altman that day?

A. Yes, I did.

Q. And where did you see him?

A. Well, while we were standing there at the group talking to him, Mr. Altman came up and we asked him why we couldn't go in. He said we couldn't go in because we were A. F. of L.

Mr. Hecht: May I have that repeated, please? May I have that read?

(The answer referred to was read by the reporter.)

Q. (By Mr. Royster): Now, Miss Reyes, when you say you were standing there talking to "him," who do you mean?

A. Well, one of the fellows out there. [482]

Q. You mean one of the ILWU men?

A. Yes, one of the ILWU men.

Q. Are you talking about the man who checked your book? A. The same man.

Q. And you and others were standing in conversation with him? A. Yes, sir.

Q. Now, where did this conversation take place with respect to the gate?

A. Well, it was quite a distance away, almost, I would say, approximately half way up the block.

Q. Half way up the block from the gate?

A. Yes.

Q. And it was outside the company's property?

A. Oh, yes.

(Testimony of Ophelia Reyes.)

Q. Then is it your testimony that Mr. Altman came up and joined this group? A. Yes, sir.

Q. You know Mr. Altman when you see him, do you? A. Yes, I do.

Q. And Mr. Altman asked this ILWU man why you could not go in?

A. Why the group of us couldn't go in.

Q. And then you testified as to what the ILWU man answered? [483] A. Yes.

Mr. Royster: That is all.

Cross-Examination

By Mr. Hecht:

Q. Have you seen this ILWU man in this hearing room? A. No, I haven't.

Q. What does he look like?

A. Well, he is slender and he is dark, and he wears a discharge button.

Q. Does he look like this gentleman over there (indicating Mr. Gleichman)? A. No.

Q. About what time of day was this, Miss Reyes?

A. What time of day? Well, it was in the morning.

Q. August 30? A. August 31.

Q. Was it August 31?

A. I believe it was.

Q. Do you know Mr. Altman?

A. I know him when I see him.

Q. Did you see him here today? A. No.

Q. Will you be surprised if I told you that Mr.

(Testimony of Ophelia Reyes.)

Altman was sitting in this room for about two hours, right over there (indicating)? [484]

A. I would be if you told me that.

Mr. Hecht: That, I think, was the fact, Miss Reyes. That is all.

Mr. Rowell: Well, describe the hearing room, if you want to get the situation in the record.

Redirect Examination

By Mr. Rowell:

Q. Is it true that there is a certain crowd of people in the hearing room, Miss Reyes, you have been sitting somewhat in the center of that crowd?

A. Yes, I have.

Q. What time did you come into the hearing room today?

A. It was a little after two, I believe.

Q. In the afternoon? A. Yes.

Mr. Edises: We will stipulate that Mr. Altman merged perfectly into the background. Perhaps we can stipulate to something like that.

Mr. Rowell: Good; I will stipulate to that, too.

Mr. Edises: Blended with the color of the walls.

Trial Examiner Ruckel: Does somebody else want to question the witness?

Mr. Edises: I have some further questions.

Trial Examiner Ruckel: I am sorry.

Mr. Edises: I was just proposing a stipulation.

(Testimony of Ophelia Reyes.)

Recross Examination

By Mr. Edises:

Q. Miss Reyes, are you a member of the A. F. of L. Chemical Workers Union?

A. Yes, I am.

Q. When did you join? A. The 6th.

Q. Of what? A. Of August.

Q. What year? A. '45.

Q. 1945? A. Yes.

Mr. Edises: That is all.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Catano Periera.

CATANO PERIERA

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please?

A. Catano Periera.

The Reporter: Will you spell your last name, please?

The Witness: P-a-r-a-e-r-a. [486]

Mr. Rowell: I think he spelled it in Spanish. It is spelled, isn't it, P-e-r-i-e-r-a?

The Witness: Yes.

Mr. Rowell: You were pronouncing the letters in Spanish.

(Testimony of Catano Periera.)

Q. (By Mr. Royster): Did you come to work on July 31? A. Yes.

Q. At what time?

A. I started at three o'clock.

Q. In the morning? A. Afternoon.

Q. In the afternoon. And what did you find?

A. I go in my locker room, choose my clothes, I go start to work. I hear everybody go out to meeting.

Q. So you didn't go to work that day?

A. I work that night.

Q. You work that night?

A. Until eleven o'clock.

Q. Then on August 1 and August 2 you did not work, did you?

A. The 2nd I come to work at two o'clock, everything closed. I go home.

Q. So you go home? A. I go home.

Q. Did you sign a card for the A. F. of L.?

A. Yes. [487]

Q. About when did you sign?

A. About the 6th of August.

Q. The 6th of August? A. Yes.

Q. Do you know Charles Grube? A. Yes.

Q. Did you have a conversation with Charles Grube? A. Yes.

Mr. Hecht: Time, please?

Q. (By Mr. Royster): And when did this conversation take place?

A. In the department.

Mr. Rowell: He asked where?

The Witness: In the plant, in the basement.

Q. (By Mr. Royster): When?

A. Well, I don't know exactly. I think on the 9th of August.

Q. The 9th of August? A. Yes.

Q. What was the conversation?

A. I got the badge of A. F. of L. He come with me. He say, "Periera, what you got on my cap?" I say, "My button." He said, "Take that badge off and put the CIO on, or out the room, or you go home."

Mr. Hecht: Could I have that readback, please?

(The answer referred to was read by the reporter.)

Mr. Royster: That is all.

Mr. Edises: Was that person identified, Mr. Royster?

Mr. Royster: Yes. It was Charles Grube.

Mr. Hecht: August 9?

Mr. Royster: Yes.

Mr. Hecht: I will confess my inability to cross-examine the witness, Mr. Royster, so I have no cross-examination.

Mr. Rowell: Don't you speak Spanish?

Mr. Hecht: Yes, but unless you get an interpreter, it will be pretty hard.

Cross-Examination

By Mr. Edises:

Q. Mr. Periera, when did you join the A. F. of L.? A. The 6th of August.

(Testimony of Catano Periera.)

Q. August 6? A. Yes.

Mr. Edises: Mr. Royster, is this witness one covered by our stipulation?

Mr. Hecht: I think so.

Mr. Royster: No, I think he is not for the reason he did not go to the meetings and he tried to go to work.

Mr. Edises: Well, my question is, is he one covered by our stipulation? Now, it may be that——

Mr. Royster (Interposing): Wait a minute! We excepted certain of them from the stipulation, and he was one.

Mr. Rowell: He was covered by the stipulation, but there were three men excepted from a certain statement in the stipulation.

Mr. Edises: That is what I want to know. Is he one of the three?

Mr. Hecht: Rigo was excepted, so was Mrs. Schneider.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Royster: He was one of the three excepted.

Q. (By Mr. Edises): Did you work on July 30, 1945? A. Yes.

Q. Did you go to the meeting in the afternoon at the Finnish Brotherhood Hall?

A. No, I work.

Q. Did you know about the meeting?

A. Yes.

(Testimony of Catano Periera.)

Q. Did they tell you what happened at the meeting, anybody tell you? A. No.

Q. You knew that on the afternoon of July 31 a lot of the workers went away from the plant, walked out? Do you know that? [490]

A. In the time I come to work.

Q. When did you find that out?

A. In the plant.

Q. And you learned that they were out on a strike, huh? A. Yes.

Q. And what did you do after you learned that? No, just a minute.

Did you learn why they were out on strike?

A. What do you mean?

Q. Did you learn that they were out on strike because the company wouldn't take the Stewards back? A. Yes.

Q. You knew that? A. Yes.

Q. What did you think about that?

Mr. Rowell: Well, now, that is immaterial, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): Did you stay out after that? Did you stay out with the other people?

A. Yes, sir.

Q. When did you go back?

A. On a Friday.

Q. What day was that? A. The 4th. [491]

Q. And you stayed out with the rest of them?

A. Yes, sir.

(Testimony of Catano Periera.)

Mr. Royster: The 3rd is a Friday.

Mr. Edises: Well, off the record, please.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: To clear up a misunderstanding developed previously, it is stipulated that Mr. Periera was one of the persons who participated in the strike, or rather, the work stoppage which occurred from July 31 to August 3, 1945.

Mr. Royster: Agreed for the Board.

Mr. Rowell: So stipulated.

Mr. Hecht: And also may it be stipulated that he is also one of the men who pleaded guilty at the so-called trial of December 17, 1945?

Mr. Rowell: I think we already have.

Mr. Royster: We have already stipulated it as a fact he did plead guilty.

Mr. Hecht: Yes.

Mr. Edises: Yes, I think that is true. I have no other questions.

Mr. Royster: No questions.

Trial Examiner Ruckel: That is all.

Mr. Royster: Thank you, Mr. Periera.

(Witness excused.) [492]

Mr. Royster: Ina Mae Paige.

INA MAE PAIGE

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of Ina Mae Paige.)

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please?

A. Ina Mae Paige, 1460 66th Street, Emeryville, California.

Q. Did you sign a designation card for the A. F. of L.?

A. Yes, I did.

Q. Do you know what date you signed it?

A. I think it was around August 4.

Q. 1945?

A. Yes.

Q. Did you come to the gate of respondent's plant on August 31?

A. Yes, I did.

Q. And did you enter?

A. No, I did not.

Q. Will you tell us what happened?

A. Well, just as we were driving into the gate, I was stopped by a number of members. I remember this fellow here (indicating). I don't know his name. [493]

Mr. Royster: Let the record show that the witness has indicated Mr. Gleichman.

The Witness: Yes. And he stopped me and he asked me for my book. Well, I didn't have the book, my CIO book, black book. So he says I couldn't go in. And I asked him if I returned home and got the book if I could go to work, and he said, "Yes, so I did so," and when I came back he, well, he ignored the fact that I had my book and wouldn't let me go in. Then I asked, "Why?" I asked him if we looked like a bunch of criminals, and in the meantime he said he asked one of the

(Testimony of Ina Mae Paige.)

higher officials why, and he said that this one stated—now, let's see how was it again?

Mr. Hecht: May I have that clarified? Who asked what high official?

Trial Examiner Ruckel: Mr. Gleichman said he had asked some higher official?

The Witness: Yes. That he had asked one of the higher officials.

Trial Examiner Ruckel: In what? The Union or the company, did he say?

The Witness: The company. And he said that he told them that was because we had the guts to say what we were for and the rest didn't. I asked him why the rest were in and we was not, that is the way it was, why we were stopped at the gate.

Trial Examiner Ruckel: I can't get it.

Mr. Edises: I would be willing to consent that Mr. Royster can lead this witness in the interest of clearing up this confusion.

Trial Examiner Ruckel: Let's have the answer read.

(The answer referred to was read by the reporter.)

Mr. Royster: Well, let me question the witness here.

Mr. Edises: Go ahead.

Q. (By Mr. Royster): Now, Miss Paige, when you returned with your dues book you attempted to submit it to Mr. Gleichman, did you?

A. Yes.

(Testimony of Ina Mae Paige.)

Q. And I believe you testified that he did not appear interested in looking at it then?

A. No.

Mr. Rowell: You mean by that he did not appear interested?

The Witness: No, he did not seem interested when I returned with my book.

Q. (By Mr. Royster): Now, were you able to get in the plant? A. No.

Q. On your second attempt? A. I was not.

Q. And who stopped you? [495]

A. Well, there were any number of members out there.

Q. Yes.

A. There was this tall fellow. I don't know—I think it is the same one the other girl was referring to, and this fellow (indicating Mr. Gleichman) is the only one I really recognized.

Q. Now, when you came back with your book you took it to Mr. Gleichman, and still you were unable to get in the plant? A. Yes.

Q. Did Mr. Gleichman tell you why you couldn't go in the plant?

A. No, I don't believe he did.

Q. Did you ask him why you were kept out of the plant?

A. Yes, that is when this answer came in about——

Q. (Interposing): All right. Now, what did he say to you? A. Well, I asked——

(Testimony of Ina Mae Paige.)

Mr. Edises (Interposing): Just a moment. May I suggest that you ask the witness to, instead of using the proper noun "he" use proper names of the parties?

Mr. Royster: Yes.

Q. (By Mr. Royster): All right. What did Mr. Gleichman say then?

A. I asked—you mean when I asked him why we were not permitted to go in? [496]

Q. Yes.

A. Well, he says, "One of your higher officials"—that was the company officials—"had just asked him——"

Mr. Hecht: Now, may I interrupt? Did he say "one of your higher officials," or did he say "one of the company officials?"

The Witness: One of the higher officials, he said. Those were the words.

Mr. Hecht: All right.

Trial Examiner Ruckel: Said——

The Witness: He said he told him it was because we had the guts to say what we were for, that is when that came in.

Trial Examiner Ruckel: Mr. Gleichman said one of the higher officials had told him, Mr. Gleichman?

The Witness: Yes.

Trial Examiner Ruckel: What?

The Witness: That we had the guts to say what we were for and the rest didn't.

(Testimony of Ina Mae Paige.)

Q. (By Mr. Royster): Did you see Mr. Altman this day? A. Yes, I did.

Q. And did you have a conversation with him?

A. Well, I also asked Mr. Altman why we were out.

Mr. Hecht: Where, please?

The Witness: Outside the gate.

Q. (By Mr. Royster): No, where did you have the conversation [497] with Mr. Altman?

A. Oh, Mr. Altman was inside the gate and I was outside.

Q. And did you talk to him through the gate?

A. Yes, I did.

Q. And what did you ask him?

A. I asked him why we was not in and the rest of the girls—there were two girls that were out at the time, they were allowed to enter and we were not, and I asked him why.

Q. Yes.

A. So he said he would go see, but he never returned.

Q. I see. Were you wearing an A. F. of L. button when you came to the gate?

A. Not when I entered the gate, but before I left there I did.

Mr. Royster: No further questions.

Mr. Hecht: Mr. Examiner, I move the testimony of this witness be stricken as having no bearing, materiality or otherwise in the issues in this case.

Trial Examiner Ruckel: Motion denied.

Mr. Hecht: I have no questions.

(Testimony of Ina Mae Paige.)

Cross-Examination

By Mr. Edises:

Q. Miss Paige, had you been particularly active in the A. F. of L., more so than other people in the plant? A. Oh, I don't think so. [498]

Q. You didn't do any more than anybody else, is that right? A. No, I did not.

Q. You wore your A. F. of L. button?

A. Part time; in fact I don't think I was as active——

Q. (Interposing): And a lot of people, a lot of other people wore their A. F. of L. button, too, didn't they? A. They sure did.

Q. And not all of those were let go?

A. No.

Q. Isn't that right? A. Yes.

Q. Do you recall any particular thing that you did that would make you outstanding as an A. F. of L. member, more outstanding or more prominent than anybody else?

A. I do not. I more or less felt that they just culled me out because they could keep me out.

Q. Now, just a moment. I didn't ask you for your opinion as to what you more or less felt.

I ask that go out.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Edises): Can you think of a single thing that distinguishes you in any way from any of the other persons in the plant who joined

(Testimony of Ina Mae Paige.)

the A. F. of L. in regard to your union activities?

A. You mean that they should keep me out?

Q. Yes. A. I do not.

Mr. Edises: That is all.

Mr. Royster: No further questions.

Mr. Rowell: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Alden Lee.

ALDEN LEE

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please?

A. Alden Lee, 1207 Alston Way, Berkeley.

Q. Did you approach the gate of respondent's plant on August 31, Mr. Lee? A. I did.

Q. Well, tell us what happened there?

A. Well, I was stopped by a Mr. Duarte and another man—I don't know what his name was. The man said, "I want to see your book." I said, "My book?" He said, "Yes." So I handed Mr. Duarte the book, and he checked it over, and I went in through the gate. [500]

Q. Now, was there anyone at the gate when you went in?

A. Mr. Carter was there. Also Mr. Altman was standing in a little ways.

(Testimony of Alden Lee.)

Q. Did you have any conversation with Mr. Carter?

A. Yes. I asked Mr. Carter what the hell was going on around here.

Q. And did Mr. Carter reply?

A. He just laughed.

Q. You went on into work then, did you?

A. I did.

Q. And did you later have a conversation with Mr. Gleichman?

A. They came around about two hours later.

Q. Who is "they?"

A. They wanted to check my book again.

Q. I mean who is "they?" A. Pardon?

Q. You say "they came around."

A. Mr. Squires and Mr. Gleichman.

Q. Mr. Squires and Mr. Gleichman?

A. That is right.

Q. All right. And what happened when they came around?

A. They wanted to check my book again.

Q. And what did you say?

A. I told them, "Why, you already checked it once this [501] morning."

Q. And did they make any reply to that?

A. Mr. Squires did. He said, "Well, you are still wearing that button."

Q. And were you wearing a button?

A. Yes, sir.

Q. What kind of a button? A. A. F. of L.

(Testimony of Alden Lee.)

Q. And did Mr. Gleichman have anything to say?

A. He asked me if I knew what I was doing.

Q. Was there any further conversation?

A. Well, I said, "Yes," and he asked Mr. Squires for my name.

Q. Yes. And was that all that occurred?

A. That was all.

Mr. Royster: That is all.

Mr. Hecht: I move to strike on the same grounds, Mr. Examiner.

Trial Examiner Ruckel: Motion denied.

Mr. Hecht: No further examination.

Cross-Examination

By Mr. Edises:

Q. Mr. Lee, are you a member of the A. F. of L. Chemical Workers Union? A. I am.

Q. When did you join? [502]

A. August 3.

Q. Are you an officer of that organization?

A. I am not.

Q. Are you a member of any committees in that organization? A. No, sir.

Q. Have you ever been? A. No.

Q. Have you ever been outstanding for activities in that organization?

A. I don't think so, no.

Q. Did you play a more prominent part than

(Testimony of Alden Lee.)

other members of that organization in pushing the A. F. of L. Union?

A. Well, I used to hand out leaflets.

Q. Well, so did a great many other employees, didn't they? A. About all.

Q. You weren't any more prominent in that regard than the others, were you?

A. No, I don't think so.

Q. Among others were persons who never were let go, isn't that right?

A. I didn't get that question.

Q. I say a lot of persons who distributed A. F. of L. literature never were let go, isn't that right?

A. I don't know. I can't answer that.

Mr. Rowell: Maybe they didn't get caught. [503]

Q. (By Mr. Edises): Did you engage in any activities of any kind which were different or more prominent than that of the other employees in the plant? A. No.

Q. Can you think of any one thing that is different or outstanding about your union activities at the plant? A. No.

Q. As an A. F. of L. member?

A. Just handing out leaflets.

Q. Isn't it a fact, Mr. Lee, that there have been a lot of persons who handed out A. F. of L. leaflets who never were let go? A. I don't know.

Mr. Rowell: Objected to as already asked and answered.

Trial Examiner Ruckel: If he knows, he may answer.

(Testimony of Alden Lee.)

Q. (By Mr. Edises): Do you know?

A. No.

Q. You don't know? A. No.

Q. Do you know of any special reason connected with your union activities why you should have been singled out for release?

A. Well, I suppose there is only one reason, the passing out of leaflets, wearing a button.

Q. But it is a fact that there were around 200

A. F. of L. [504] people in that plant, weren't there?

A. Yes.

Q. And practically all of them wore their buttons, didn't they? A. No, not all of them.

Q. Well, the great majority of them wore their buttons? A. I wouldn't say that.

Q. How many of them didn't wear their buttons?

A. That is pretty hard to decide. I never did count them.

Q. Would you say that half of them wore their buttons?

A. No, I wouldn't say "half"; about 75, perhaps.

Q. 75 wore their buttons? A. Perhaps, yes.

Q. Do you know whether everybody who wore a button was discharged? A. No, I don't.

Q. You don't know that? A. No.

Q. The fact is, there were a lot who wore their buttons who were not, isn't that true?

A. I don't know.

(Testimony of Alden Lee.)

Q. Was Mr. Carter your superior?

A. Mr. Hutchings was my foreman.

Q. Was Mr. Carter one of your superiors at the plant? A. He is a supervisor, yes. [505]

Q. He is one of your Supervisors then?

A. He is a Supervisor.

Q. Is that the way you were in the habit of addressing your superiors, "What in the hell is going on around here?"

Mr. Rowell: I object.

Mr. Hecht: That was the answer he gave.

Mr. Rowell: Certainly it was, but is it material whether he was in the habit of using that language or not?

Mr. Hecht: That may be the reason Mr. Carter just laughed.

Trial Examiner Ruckel: Let's not have any further comments. Objection sustained.

Mr. Rowell: Maybe I would have said the same thing.

Trial Examiner Ruckel: That may be stricken.

Mr. Edises: That is all.

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: And no further witnesses.

I have four more witnesses I want to put on in the morning, but they will take a very, very short time.

Mr. Edises: May we have a stipulation as to the

(Testimony of Alden Lee.)

dates that the persons who have not testified joined the A. F. of L.?

Mr. Royster: Yes, I am willing to stipulate to that.

Mr. Rowell: Suppose we just stipulate a certain [506] period.

Trial Examiner Ruckel: Off the record.

(Remarks off the record.)

Trial Examiner Ruckel: Of the record.

Mr. Royster: Mr. Luchsinger.

You have already been sworn.

DAVID LUCHSINGER

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Royster:

Q. Mr. Luchsinger, were you issued a badge during the course of your employment by the respondent? A. I was.

Q. Did you wear that badge? A. No, sir.

Mr. Royster: That is all.

Cross-Examination

By Mr. Hecht:

Q. Did you deny yesterday, Mr. Luchsinger, that you had been issued that badge?

Mr. Rowell: That is objected to. The record speaks for itself.

(Testimony of David Luchsinger.)

Trial Examiner Ruckel: Is there a doubt as to what the record will show? I don't know myself.

Mr. Hecht: My recollection is—— [507]

Perhaps it isn't the clearest in the world—that the witness denied he had a badge, ever had one.

The Witness: If that was the statement, that was a misstatement. I said I was issued a badge but never wore the badge in the plant.

Q. (By Mr. Hecht): Did you say originally you were issued the badge?

A. I said I was issued a badge but I have never worn the badge because I never walked through the gate. I always had a car, I drove in a machine, and I had a sticker on my car to identify, that was issued by the company.

Q. Do you now state that you did not yesterday testify that you had never been issued a badge?

Mr. Rowell: It has already been asked and answered. He stated if he did say it, it was wrong.

Mr. Hecht: He has not answered it.

Trial Examiner Ruckel: Well, the record will show what he said.

That is all.

(Witness excused.)

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Recess until 9:30 tomorrow morning.

(Whereupon, at 5:10 P.M. an adjournment was taken to Friday, February 8, 1946, at 9:30 A.M.) [508]

[Title of Board and Cause.]

Friday, February 8, 1946.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 a.m. [509]

PROCEEDINGS

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Rowell: Mr. Examiner, in response to a request by Mr. Edises I have here the Constitution and By-Laws of the International Chemical Workers Union, and I will offer them in evidence, if I may have a stipulation, as A F of L's Exhibit next in order.

Trial Examiner Ruckel: It has been offered?

Mr. Rowell: It has been offered. Mr. Edises is examining it.

Mr. Edises: Are you going to offer that?

Mr. Rowell: Yes, I have offered it.

Mr. Edises: Well, I will stipulate that this appears to be the Constitution and By-Laws of the International Chemical Workers Union.

Trial Examiner Ruckel: You stipulate that it is?

Mr. Edises: I will stipulate that it is.

Mr. Rowell: Good. Thank you.

Trial Examiner Ruckel: It may be received.

Mr. Royster: No objection.

(Thereupon the document above referred to was marked Petitioner's Exhibit 2 and received in evidence.)

Mr. Edises: And I would like to ask Mr. Rowell for a copy of the Constitution and By-Laws of the local. [512]

Mr. Rowell: If they exist I will——

Mr. Edises: (Interposing) Well, can you find out whether they exist?

Mr. Rowell: I will during the next intermission.

Trial Examiner Ruckel: Find out off the record.

Mr. Edises: Will it be stipulated that what I have in my hand is the Constitution and By-Laws and Rules of Order of Warehouse Union, Local No. 6, International Longshoremen & Warehousemen's Union, which were in effect at the time of the events complained of?

Mr. Rowell: (Examining document) Yes, so stipulated.

Mr. Edises: I offer that.

Trial Examiner Ruckel: That will be marked the Intervener's next succeeding number.

It may be received.

Mr. Rowell: No objection.

(Thereupon, the document above referred to was marked Intervener's Exhibit No. 5 and received in evidence.)

Trial Examiner Ruckel: Call your next witness.

Mr. Royster: Call William Howard.

WILLIAM C. HOWARD

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [513]

Direct Examination

By Mr. Royster:

Q. State your name and address, please.

A. William C. Howard, 141 Ronada Avenue, Piedmont.

Q. Did you sign a designation card for the A F of L, Mr. Howard? A. Yes, sir.

Q. About when did you sign it?

A. I would say about August 3rd, somewhere in there.

Q. Of what year? A. 1944—'45.

Q. Do you know Mr. Hack Gleichman?

A. Fairly well. I have seen him around there.

Q. All right. Did you see Mr. Gleichman in the respondent's plant in the machine shop?

A. Yes, sir, I did.

Q. Now, can you tell us about when you saw him there?

A. Well, it was along in the latter part of August.

Q. Of last year? A. Yes, sir.

Q. Was he having a conversation with anyone?

A. With the machine shop foreman.

Q. And what is the name of the machine shop foreman? A. Victor Petersen.

Q. And could you hear this conversation?

A. Yes, I did. [514]

(Testimony of William C. Howard.)

Q. Was there anyone else present who could hear it other than those you have named?

A. No. The machine shop foreman and I were standing there together when he came up.

Q. What did Mr. Gleichman say?

A. He gave him a whole handful of buttons and told him to put them on the machinists.

Q. What kind of buttons?

A. CIO buttons.

Q. What did Mr. Petersen say, if anything?

A. He just took them and walked away, didn't say anything.

Q. Was there anything said about the A F of L buttons?

A. Well, he wanted them to take off A F of L buttons and put on the CIO buttons, is what I gathered from it.

Mr. Edises: Now, I ask that that go out as the conclusion and opinion of the witness.

Trial Examiner Ruckel: What did he say? Did he say anything about taking off the A F of L buttons?

The Witness: Yes.

Q. (By Mr. Royster): Who did?

A. Gleichman.

Q. To whom did he say this?

A. To Petersen.

Q. And what did he say?

A. Well, Petersen just took the buttons and walked away, didn't say anything. [515]

Q. I mean, what did Mr. Gleichman say?

(Testimony of William C. Howard.)

A. That was all there was to it. He just told him to take—if there was any A F of L buttons to take them off and have CIO buttons put on all of his men.

Q. Did you attend A F of L meetings during the month of August? A. Yes, sir.

Q. Did you attend them directly?

A. Every one of them.

Q. Do you know Charles Grube?

A. I did.

Q. Did you see him near any of these meetings?

A. Practically every one, if not every one; he was out in front with the business agents of the CIO.

Q. Out in front of where?

A. In front of where we met with the A F of L meetings.

Q. Where was he with respect to the entrance to this hall?

A. Well, usually parked across the street right opposite the door, and to one side, right alongside of the door.

Q. Were you in Mr. Railey's office——

Trial Examiner Ruckel: Is he a member of the CIO, do you know?

The Witness: He is a member of the CIO, yes, sir. He is also a foreman in the plant.

Q. (By Mr. Royster): Were you in Mr. Railey's office on [516] September 1?

A. I was. I was the first one in there.

(Testimony of William C. Howard.)

Q. Did you have a conversation with Mr. Railey?

A. I did.

Q. Will you tell us what that conversation was?

A. I asked him first what we were brought in there for. He told me to wait a minute, there were some more coming in. After they came in, I believe it was Mr. Altman read this letter from the CIO. After he read it I asked Mr. Railey, I said, "Do you mean to tell me you are going to take orders from the CIO to lay old employees off? Practically all of them have been there years. I know I have."

And he says, "Well, I didn't want you fellows to join a union in the first place. You joined it. Now you got yourself in trouble, get out of it."

Q. Was that a direct conversation between you and Mr. Railey?

A. Directly with me, direct with me. I did the talking and he did the answering.

Mr. Royster: That is all.

Mr. Hecht: Just a moment, please.

As to the testimony relating to the conversation between Hack Gleichman and Foreman Victor Petersen, I move to strike.

Trial Examiner Ruckel: It may stand.

Mr. Hecht: As to the incident of Charles Grube being [517] around there for A F of L meetings I move to strike.

Trial Examiner Ruckel: Motion denied.

Mr. Rowell: Mr. Examiner, I desire to ask one question of this witness similar to one to which ob-

(Testimony of William C. Howard.)

jection was sustained yesterday. Before asking it I want to explain the reason.

This witness, as well as others, has testified to a statement by Mr. Railey, that he did not want them to join a union in the first place, and now that they are in that trouble they could get themselves out of it. Mr. Railey denied having made any such statement, and the reason he gave for the fact that he wouldn't have been likely to do it was that he never fought them, he never fought the union. I wish to ask a question of this witness on that subject.

Mr. Hecht: If you are going into that——

Trial Examiner Ruckel: (Interposing) You will have to file another charge and have an unfair labor practice case.

Mr. Rowell: After all, there has been a conflict in the testimony. It is a matter of believing these witnesses or believing Mr. Railey's statement.

Trial Examiner Ruckel: Whatever this witness said would be his own conclusions.

Mr. Rowell: No. I am going to ask him whether he was present on occasions which strongly indicate—not an opinion. I want to have him testify as to facts. [518]

Mr. Hecht: Mr. Examiner, if that question is permitted, of course I will ask for a recess after Saturday to recall Mr. Railey to rebut any testimony.

Trial Examiner Ruckel: We are not going to do anything that isn't covered by the pleading.

(Testimony of William C. Howard.)

Mr. Edises: Mr. Examiner, I want to say as far as the Intervener ILWU is concerned, we recognize that, of course, the testimony would be irrelevant because it is an impeachment, it is an attempted impeachment on an immaterial point. However, as far as the attempt to show that the company fought the ILWU over a period of years, we would hardly be in a position to deny that there was considerable conflict between the company and the union.

Mr. Hecht: Now, I am not going to subscribe to that statement, Mr. Edises, because in the first place I know nothing about it, and Mr. Railey's information to me is to the contrary.

Mr. Edises: Well, obviously colloquy between us——

Trial Examiner Ruckel: When the witness says "never fought the union" that is his opinion. He is not testifying that he never made this or that particular statement which might be controverted by evidence to the contrary. How are you going to controvert his opinion, that his company never fought the union? Maybe your opinion is that it did, but it still is a question of opinion. [519]

Mr. Rowell: If the facts are so obvious, Mr. Examiner, and I think they are somewhat obvious and very strong——

Trial Examiner Ruckel: Well, I am not going to permit the question. You can ask it if you want to and I will sustain the objection.

(Testimony of William C. Howard.)

Mr. Rowell: Well, I won't ask it then. No further questions.

Mr. Hecht: I have no questions of the witness. Oh, yes, one question.

Cross Examination

By Mr. Hecht:

Q. Mr. Howard, did you on December 17, 1945, attend something that has been described as a trial or hearing on charges brought against you by the ILWU? A. What date?

Q. December 17, 1945?

Mr. Rowell: We will stipulate that that was the date.

A. I attended a trial that I was called to by the advice of the attorneys I appeared before but did not stand trial.

Q. (By Mr. Hecht): You didn't stand trial?

A. No, sir.

Q. Have you since that date received a notice that you have been expelled from the ILWU?

A. No, I haven't, but I have had information that I was expelled.

Mr. Hecht: That is all. [520]

Trial Examiner Ruckel: Any further questions?

Mr. Edises: Yes.

Q. (By Mr. Edises): How long were you a member of the ILWU, Mr. Howard?

A. All the time it has been in the plant. I was there before any union came in the plant.

(Testimony of William C. Howard.)

Q. How long, then, have you been a member of the ILWU or its predecessor?

A. Well, I don't know. I went in when the plant was taken. I don't know the date.

Q. Were you there when Charlie Grube was an ordinary employee, not a foreman?

A. I was on the committee with him, he and I were on the same committee there together. He was the head shop steward and I was a steward.

Q. Head shop steward for the ILWU?

A. Yes, sir.

Q. Charlie was one of the founders of the union at Peet's, wasn't he?

A. He and I were, and the man I mentioned, Victor Petersen.

Q. And isn't it a fact that Charlie Grube and yourself and, well, several other employees, were actually the leading spirits, the leading spirits in the ILWU? A. No. [521]

Q. At the plant?

A. Not of the ILWU. We started it around there before we went into the ILWU.

Q. I understand that. What I mean is that as far as union organization at the plant is concerned, both in the ILWU and the organization, which was the parent, so to speak, of the ILWU——

A. (Interposing) Yes.

Mr. Rowell: Well, let's don't be mysterious about that organization. It was the ILA, A F of L, wasn't it?

Mr. Edises: All right, ILA.

(Testimony of William C. Howard.)

Q. (By Mr. Edises): You and Charlie Grube and a number of others were the pioneers in organization at the plant, isn't that true?

A. That is right.

Q. And isn't it a fact that until he was made foreman of this department Charlie Grube was always in some office or on some committee?

A. Yes, that is true.

Q. In the union? A. That is true.

Q. Do you know what Mr. Petersen did with these buttons that Mr. Gleichman handed him?

A. I don't remember.

Q. Well, now, will you explain that, please? Did you [522] once know and have now forgotten?

A. Yes.

Q. You once knew and you have now forgotten?

A. I have forgotten it, yes.

Q. All right. What did you know before you forgot it?

Mr. Rowell: Well, now——

Trial Examiner Ruckel: (Interposing) Objection sustained.

Mr. Edises: Will you read the last statement of the witness?

Mr. Hecht: I think, Mr. Examiner, that it is obvious from the demeanor of the witness that he is refusing to answer. I think he should be instructed to answer.

Mr. Rowell: His demeanor doesn't impress me that way at all. He has been a very cooperative witness.

(Testimony of William C. Howard.)

Mr. Edises: Mr. Examiner, I want to ask that colloquy of this kind be dispensed with, especially when counsel is in the act of examining the witness.

Mr. Rowell: Certainly. When Mr. Hecht makes a comment as to the demeanor of the witness I am entitled to make a comment also.

Mr. Edises: Mr. Examiner, haven't I the right to continue with my examination?

Trial Examiner Ruckel: Yes. The objection to the particular question was sustained.

Mr. Edises: I had a request to the reporter. I would like to have the last statement of the witness read in answer to my question, the question and answer.

(The question and answer referred to were read by the reporter.)

Mr. Edises: That is the answer I wanted.

Now, Mr. Examiner, I submit it is flying in the face of common sense to overlook the fact that this witness is being deliberately condemnations and obstreperous.

Mr. Rowell: Well, now——

Mr. Edises: Now, just a minute, Mr. Rowell, I am still making my point.

Trial Examiner Ruckel: Let counsel finish his statement.

Mr. Edises: And I am going to ask the Trial Examiner, in view of the witness' statement and his demeanor, that he be instructed to answer my question.

(Testimony of William C. Howard.)

Trial Examiner Ruckel: He cannot answer your question. The last is impossible to answer. If he has forgotten, then he cannot possibly say what his recollection was before.

Mr. Edises: Mr. Examiner, may I point out when I asked him a question as to whether he knew, really knew what had taken place, his answer was "That is my business."

Now, I submit after all this is a——

Trial Examiner Ruckel (Interposing): That was the answer, but it was answered to a question that was not susceptible of being answered. [524]

Mr. Rowell: Ask your question again, Mr. Edises. I am sure he will answer it.

Mr. Edises: All right.

Trial Examiner Ruckel: The question that was asked him, the previous question before that, was what did Mr. Petersen do with the buttons. He said he had forgotten.

Do you mean by that that you have forgotten, or you don't know?

The Witness: I didn't pay any attention. I just walked out. It was none of my affair anyway. He was not talking to me.

Q. (By Mr. Edises): Well, then, your answer is that you don't know?

A. Yes, that is the best answer, sure.

Q. You don't know, in other words, whether he walked into the next room and dumped all those buttons into an ashean, do you?

A. No, I don't.

(Testimony of William C. Howard.)

Q. Uh huh. And you are not claiming that you saw him passing any of them out, are you?

A. No, I am not. I told you I walked out. I didn't stay to see the proceedings.

Mr. Edises: Yes. Is this witness, Mr. Royster, covered by our stipulation? [525]

Mr. Royster: He is.

Mr. Edises: Yes. That is all.

Mr. Rowell: No questions.

Mr. Royster: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Hecht: I renew my motions to strike, Mr. Examiner.

Trial Examiner Ruckel: Beg your pardon?

Mr. Hecht: I renew my motions to strike.

Trial Examiner Ruckel: Motion denied.

Mr. Royster: Mr. Richmond.

FRANKLIN L. RICHMOND

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, Mr. Richmond?

(Testimony of Franklin L. Richmond.)

A. Franklin L. Richmond, 1121 Blake Street, Berkeley, California.

Q. Did you sign a designation card for the A F of L? A. I did.

Q. And about when did you sign it?

A. On or about August 3, I believe.

Q. 1945? [526] A. Yes, sir.

Mr. Hecht: May I have that answer, please?

Mr. Royster: "On or about August 3, I believe."

Q. (By Mr. Royster): Did you have a conversation with Mr. Gleichman in the Toilet Articles Department? A. Yes, I did.

Q. When did this conversation take place?

A. I don't remember the exact date.

Q. As nearly as you can place it?

A. It was just about four days, I think, before I was fired.

Q. And when were you fired, as you put it?

A. On or about the 5th of September.

Q. Now, who was present when this conversation took place?

A. Well, at the first part of it there was only he and I.

Q. And did someone else later join you?

A. No. I walked over to my boss, Mr. Carlson.

Q. All right. Well, now, let's have the conversation then that took place between Mr. Gleichman and you with no one else present?

Mr. Hecht: I am sorry to interrupt, Mr. Royster. Who did he say his boss was?

The Witness: Carlson.

(Testimony of Franklin L. Richmond.)

Q. (By Mr. Royster): What was the conversation, Mr. Richmond? [527]

A. I was walking across the floor, and I had my A F of L button on. He spied this button, he walks over and he says, "What in the hell are you doing in here?" and I says, "I am working here," and he says, "How long have you been working?" I says, "About 10 years." He says, "Did we see your book?" and I says, "You did." And he says, "Let me see it."

And that is when I walked over to my boss.

Mr. Edises: Excuse me. Was that conversation supposed to have been with Mr. Gleichman?

Mr. Royster: Yes.

Q. (By Mr. Royster): Well, when you walked over to your boss what did you do?

A. I says, "Mr. Carlson, has this goon got any right to come in here and——"

Mr. Edises (Interposing): What was that?

A. I asked Mr. Carlson if this goon had any right to come in here and demand to see my book merely because I have got a button on. He says, "Well, he can ask to see your book, is all." And I says, "All right, I will go and get it."

Mr. Hecht: You said what?

The Witness: I said, "I will go and get it."

So I went and got the book, and I gave it to him, and he just opened up the back of it and got the number. And he says, "1961, huh?" That is all. And I says, "Now I suppose I will get one of your letters?" He says, "You will!" [528]

(Testimony of Franklin L. Richmond.)

Q. (By Mr. Royster): And did you?

A. I did.

Mr. Hecht: Was Carlson supposed to have been present during this conversation? I can't hear the witness.

Mr. Royster: Well, I think not, but I will get it straight here.

Q. (By Mr. Royster): Was Mr. Carlson present when Mr. Gleichman looked at your book and got the number?

A. No, he was not. The first part of the conversation was approximately 25 feet from where Mr. Carlson was standing, and when I walked over, Gleichman walked over with me, and Mr. Carlson told me he could ask to see my book, so I walked back over to the dressing room, and Mr. Gleichman followed me over. Mr. Carlson stayed over by the packing bench.

Q. Now, were you called to the office of any one of the company's executives a few days after that?

A. Yes, I was. I was called into Mr. Carlson's office.

Q. And what took place there?

A. Well, Mr. Altman, then—before that, a few minutes before, had came along, and he spoke to me and I spoke and I says, "I hear they got your oiler." And he says, "You didn't happen to hear anything about Mr. Richmond, did you?" And I says, "Well, I have been hearing something about it for several days." And he says, "Well, I got a letter this morning that you are no longer in good stand-

(Testimony of Franklin L. Richmond.)

ing and I will have to [529] let you go." And I says, "Well, I have got an order here I am working on that Mr. Carlson asked me to fix for him." I says, "I suppose you have the final say, but Mr. Carlson, being my immediate boss, you go and tell him and let him come and tell me, and that will give me a chance to finish this order."

So he went and told Mr. Carlson, and then Mr. Carlson called me in the office.

Q. Well, did you have a conversation then with Mr. Carlson, or Mr. Altman?

A. Mr. Altman.

Q. In Mr. Carlson's office? A. Yes.

Q. And will you tell us—was Mr. Carlson there also? A. Yes, sir.

Q. Was anyone else there?

A. No. Well, Louie Mueller, the second foreman, did walk in for a few minutes in the middle of the proceedings.

Q. And this took place about the 5th of September?

A. On or about that. I am not exactly sure. I think it was.

Q. And what was the conversation now, who said it, and what did they say?

A. Well, Mr. Altman said that he has been notified that I am no longer in good standing with the Warehousemen's, and [530] having a contract with them he couldn't keep me on the job. And I says, "Well, I am not in bad standing with them." I says,

(Testimony of Franklin L. Richmond.)

"I have my book in my pocket, I can show it to you, that it is in good order."

Mr. Hecht: Mr. Examiner, I am going to move to strike this latter part of the conversation right now. I don't think it is material to this case at all, this man's opinion as to his position in the union.

Trial Examiner Ruckel: Well, let's have the whole conversation.

What else was said?

The Witness: And he says, "well, there would be no point in me looking at your book," he says, "the thing is, we have a contract and we have to live up to it."

Q. (By Mr. Royster): Have you exhausted your recollection as to what else may have taken place?

A. No, I know what he said. I was just trying to think how he said it.

Trial Examiner Ruckel: Well, what was it?

A. Well, he says I am not the only one that is being laid off. He says, "Some of them wanted to see it in writing," he says, "but we tried to refrain from giving it in writing because that makes it seem so final," and he would want to keep it on kind of a temporary basis, if possible, or something to that effect, is the way he put it.

Q. (By Mr. Royster): Is there anything else you remember?

A. Yes. I remember that I mentioned to him that for every one of us that was laid off like that, for wearing those buttons, he was going to have some kind of a charge placed against him. I didn't know

(Testimony of Franklin L. Richmond.)

just what kind it would be, but he would have some kind of a charge against him. Then he led me out to the gate. I haven't been back yet.

Mr. Royster: That is all.

Mr. Hecht: I move to strike, Mr. Examiner, all that testimony referring to conversations with Mr. Altman, and with respect to his removal from employment.

Trial Examiner Ruckel: It may stand. Any questions?

Mr. Rowell: No questions.

Trial Examiner Ruckell: Respondent?

Cross-Examination

By Mr. Hecht:

Q. Mr. Richmond, did you on December 17, 1945, attend a trial or a hearing in Oakland at the Green Room, a trial before the ILWU committee?

A. Well, I went to this——

Q. (Interposing): Call it what you will.

A. I went to this so-called trial. I don't remember the exact date.

Q. It would be around December 17, '45, at any rate?

A. Possibly, but I didn't stand trial.

Q. You just went in and left? [532]

A. Yes.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Just a moment. Mr. Edises?

Q. (By Mr. Edises): Mr. Richmond——

(Testimony of Franklin L. Richmond.)

Mr. Hecht (Interposing): Oh, pardon me. Before you go on, Mr. Edises.

Q. (By Mr. Hecht): Did you subsequently get any notice from the ILWU that you had been expelled from the Union? A. No, I didn't.

Q. Did you hear that you had been expelled from the Union?

A. I heard something to that effect.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Richmond, we have stipulated with your counsel that you were present at this meeting of July 30, 1945, at the Finnish Brotherhood Hall, and that you went along with the actions taken there, and one of those actions, you may recall, was the sending of this notice, telegraphic notice, to the Union and to the company stating that people there were withdrawing from the ILWU and forming this Employees Welfare Association.

You recall that, do you not? A. I do.

Q. When did you change your mind about withdrawing from the ILWU?

Mr. Rowell: That is objected to. [533]

Trial Examiner Ruckel: Just a moment.

Finish the question.

Q. (By Mr. Edises): The question was: When did you change your mind about withdrawing from the ILWU?

Mr. Rowell: That is objected to; there is no testimony to that effect.

Mr. Edises: Mr. Examiner, I submit this wit-

(Testimony of Franklin L. Richmond.)

ness is one of those who, by stipulation, withdrew from the ILWU, and here we find a little while later he is making a to-do about being in good standing, or not being in good standing, and I have a right to ask him——

Mr. Rowell: Well——

Mr. Edises: And I have a right to finish my question, too, Mr. Rowell.

Mr. Rowell: Go right ahead.

Mr. Edises: Will you read back my statement, please?

(The statement referred to was read by the reporter.)

Mr. Edises (Continuing): ——whether or not he changed his mind and when.

Mr. Rowell: That is a legal question, whether the man is in good standing or not. He may happen to have the impression himself that if he pays these dues he is in good standing.

Mr. Edises: Mr. Examiner, I didn't ask him that question. I asked him when he changed his mind.

Mr. Rowell: The question is misleading.

Mr. Hecht: Mr. Rowell, I will enter a stipulation with you that it is a legal question. If it is, what are we doing here?

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: The objection is sustained to the question when he changed his mind, Mr. Examiner.

Trial Examiner Ruckel: Yes.

Mr. Edises: Now I will ask him a further question.

(Testimony of Franklin L. Richmond.)

Q. (By Mr. Edises): Mr. Richmond, did you ever change your mind about withdrawing from the ILWU?

Mr. Rowell: Well, that is the same question, Mr. Examiner. It depends on the legal conclusion of the witness, as to whether or not he actually had withdrawn from the ILWU.

Mr. Edises: Well, Mr. Examiner,——

Trial Examiner Ruckel: There is no question of the legal effect. It is his intention we are concerned with.

Mr. Edises: Certainly.

Trial Examiner Ruckel: He may answer, if he can.

A. Well, I would like to answer with a statement.

Trial Examiner Ruckel: You can.

The Witness: I was against going into the Warehousemen from the beginning, in July of 1941, I never wanted to go into it, and I voted so when our local voted on the question whether or not to go into it. I voted against it. [535]

Trial Examiner Ruckel: Well, that isn't answering the question. Counsel's point is that you approved of this wire which was sent saying that the group was withdrawing from the ILWU, this wire sent at this meeting on July 30. Then we find that as late as September you are still a member of the union because it is not until some time in September that you are expelled. So counsel asked you when it was that you changed your mind.

(Testimony of Franklin L. Richmond.)

Mr. Edises: If he changed his mind.

Trial Examiner Ruckel: If you changed your mind.

Mr. Edises: The question asked when he changed his mind was objected to.

Q. (By Mr. Edises): I am now asking you, Mr. Richmond, if, after this withdrawal telegram in which you concurred on July 30, if you changed your mind after that about belonging to the ILWU?

A. And you mean did I change my mind and want to stay in good standing? Is that your point?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Edises): Yes, that is all right. We will put it that way.

A. No, not at all.

Q. Yes.

A. I didn't change my mind, and I didn't give a hoot about being in good standing with the union, as far as that was [536] concerned. It was merely the fact that Mr. Altman was using this as an excuse to fire me.

Mr. Edises: Now, I ask that——

The Witness: And I was merely——

Mr. Edises: Just a minute.

I ask that part about Mr. Altman go out.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Edises): In other words, if I understand your answer, the telegram of July 30th withdrawing from the ILWU expressed your true wishes and intentions, and you never changed your mind; is that right? A. That is right.

(Testimony of Franklin L. Richmond.)

Mr. Edises: That is all.

Mr. Royster: No questions.

Mr. Rowell: No questions.

Mr. Hecht: Mr. Examiner, in the testimony of the witness on cross-examination I move to dismiss any charges on behalf of this complainant against the respondent.

Trial Examiner Ruckel: Motion denied at this time.

Mr. Rowell: Could I ask one question?

Redirect Examination

By Mr. Rowell:

Q. With regard to that so-called trial that the ILWU had you come to, you testified that you went there and left.

Did you in addition join in that statement which was [537] read in your behalf explaining the reasons why you weren't standing trial? A. Yes.

Mr. Rowell: No further questions.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: None.

Mr. Hecht: No questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Mr. Navarro.

EDWARD NAVARRO

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of Edward Navarro.)

Direct Examination

By Mr. Royster:

Q. State your name and address, please?

A. Edward Navarro, 1516 5th Street, Berkeley, California.

Q. When did you go to work for the respondent, Mr. Navarro?

A. Oh, it was in December, on or about the 5th, 1944.

Q. Were you a member of any labor organization when you went to work there?

A. Yes, I was a member of the 1304, CIO Union.

Q. Is that the East Bay Union of Machinists?

A. Yes.

Q. Local 1304? [538] A. Yes.

Q. Now, did you continue your membership in that organization? A. Yes, I did.

Q. Did you sign a designation card for the A. F. of L.? A. Yes, on or about August 3.

Q. 1945? A. 1945.

Q. After signing that designation card did you continue—I will withdraw that.

Did you ever pay dues to Local 1304?

A. Yes, I did, until——

Q. After signing the designation card of the A. F. of L., did you continue to pay dues?

A. Yes, I did.

Q. Did you ever join the ILWU?

A. No, I didn't.

Q. Did you in the month of August, 1945, or

(Testimony of Edward Navarro.)

early September, 1945, make any attempt to transfer to the ILWU?

A. I did. I went and I was refused.

Q. You made an attempt to transfer?

A. I did.

Q. And the transfer was refused?

A. Yes.

Mr. Edises: What was the date of that? [539]

Q. (By Mr. Royster): Can you give us the date that you made this attempt?

A. Well, it was on or about September 4th when I was handed that letter from Mr. Wood that I had to go to Oakland and join the ILWU, about 10 o'clock I was handed that letter, and I went about three o'clock. I went out—they made me go out to transfer, and I met Mr. Smith.

Q. Is that Jim Smith?

A. Yes, and I handed the letter and my book saying that the ILWU tried to transfer me, or else I wouldn't be working at Peet's any longer, and there was another man there from the Machinists Union that said I couldn't be—get any transfer because I was wearing an A. F. of L. button in the plant.

So Mr. Smith handed me the letter and the book back and said that I was washed out. That is all.

Q. So you were never able to transfer to the ILWU? A. No.

Q. And you were taken off the job at Peet's were you not? A. Yes.

Mr. Royster: That is all.

(Testimony of Edward Navarro.)

Mr. Hecht: Off the record, please.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Cross-Examination

By Mr. Edises:

Q. Mr. Navarro, when did you go to work at Peet's? A. On or about December 5, 1944.

Q. And what was your job?

A. Soap blower.

Q. Soap blower? A. Yes, sir.

Mr. Edises: Will it be stipulated that the job that this witness was engaged in was one of those which is covered by the contract between the company and Local 6?

Mr. Royster: I assume that is so. Let's go off the record for a minute.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Mr. Edises: Will it be stipulated by counsel for the parties here that the witness Navarro was engaged in an activity, a job which is within the bargaining unit covered by the contract of July 9, 1941?

Mr. Royster: So stipulated.

Mr. Rowell: So stipulated.

Mr. Hecht: So stipulated.

Q. (By Mr. Edises): Now, Mr. Navarro, what was the date in 1944 that you went to work?

Mr. Rowell: Already asked and answered. [541]

(Testimony of Edward Navarro.)

Mr. Royster: That is the third time now.

Mr. Edises: I am sorry.

Mr. Royster: December 5.

Mr. Edises: December 5.

Q. (By Mr. Edises): Did you apply for membership in ILWU Local 6 on or before December 20, 1944? A. No.

Q. Did you apply for membership in Local 6 at any time after you went to work, and prior to the time that you went to see Jim Smith?

A. No, I didn't apply.

Mr. Edises: I have no further questions, but I wish to direct the attention of the Trial Examiner to Section 3 of the agreement, which is in evidence, which provides that any employee in order to be eligible for employment by the company, and who is within the bargaining unit, must make application for membership within 15 days of their employment in order to have status.

Trial Examiner Ruckel: What is the Board's theory at to this man?

Mr. Royster: That he was left alone, that it was satisfactory for him to belong to the CIO Machinists Union until the time came when he wore an AFL button in the plant, and a question concerning representation arose, and the campaigning got hot, and then they thought they had better get rid of him. [542] I think they are stultified by the fact they let him go for 9 months.

Trial Examiner Ruckel: Isn't that their privilege to let him go?

(Testimony of Edward Navarro.)

Mr. Royster: What is that?

Trial Examiner Ruckel: You claim that is not their privilege?

Mr. Royster: Oh, it is their privilege to let him go for 9 months. They are privileged, of course, never to require him to join the ILWU?

Mr. Rowell: But when he joins the A. F. of L. he is then required to, when he joins in a movement of change of affiliation.

Mr. Hecht: Mr. Examiner, may I point out that the record shows that five of the complainants in this matter were the stewards from the date he went into the employ of the company to July 1, 1945.

Trial Examiner Ruckel: Well, anyway, that is your theory.

Mr. Royster: That is our theory, yes.

Trial Examiner Ruckel: Any further questions?

Mr. Rowell: I have a question or two.

Redirect Examination

By Mr. Rowell:

Q. When you went to work there, Mr. Navarro, did you know of this contract the ILWU had with the [543] Company?

Mr. Edises: Objected to as immaterial, whether he knew it or not. The question is one of whether the ILWU had the right under its contract.

Mr. Rowell: That is preliminary, Mr. Examiner.

Mr. Edises: To ask that this man be dismissed.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): Did anyone from the

(Testimony of Edward Navarro.)

ILWU come around to you when you were working before this date of September 4th or 5th that you testified to and ask you to join—tell you you had to join a union? A. Yes; Mr. Davies.

Q. Mr. Davies? A. Roy Luchsinger.

Q. Roy Luchsinger? When was that?

A. I couldn't remember exactly, but it was about—two or three months after I started working there, and he called my attention and said, "You better go and join the ILWU." And I went to get my release card from the 1304, and I can't name the two persons that were there, and they said, "Well, if there are four more members of the 1304 in that plant that have not been molested by this union, why could I want any transfer?" "You stay the same way that you are." So I stayed, and nobody bothered me after that in the 1304 because there was four more machinists there, and they never made any [544] attempt to transfer them to the ILWU.

Mr. Hecht: I move to strike all of that, Mr. Examiner.

Trial Examiner Ruckel: It may stand.

Mr. Rowell: I think it is perfectly relevant.

Q. (By Mr. Rowell): To your knowledge, are there other members of 1304 still employed there that are not members of the ILWU?

A. Yes, there are three or four of them. I am not sure if there are four, but three there are.

Mr. Rowell: That is all.

Mr. Royster: No questions.

(Testimony of Edward Navarro.)

Mr. Hecht: Mr. Examiner, I move to dismiss all the charges brought on behalf of this complainant.

Trial Examiner Ruckel: Motion denied at the present time.

Mr. Royster: That is all.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Rose Gilbert.

ROSE GILBERT

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address, please? [545]

A. Rose Gilbert, 2449 Bonner, Berkeley.

Q. When did you go to work for the Respondent, Miss Gilbert?

A. Oh, sometime in September. I don't know when.

Mr. Edises: Will you talk up a little?

The Witness: I went to work at Colgate-Peet's sometime in September.

Trial Examiner Ruckel: Of what year?

The Witness: Of '45.

(Testimony of Rose Gilbert.)

Q. (By Mr. Royster): Could it have been about the 21st of August, 1945?

A. It might be, somewhere around there. I don't know the exact date I started.

Q. Now, will you tell me how you secured employment there?

A. I went down there and put an application in and about——

Q. (Interposing): Went down where?

A. Down to the office at Colgate-Peet's.

Q. Of the plant? A. Yes.

Q. All right.

A. And a few day later they called me up, and I went to work there.

Q. Were you told that you must join any labor organization to work there?

A. No, there was not any stipulation of any kind that the [546] CIO was even in there. I didn't even know they existed, nor did any shop steward or anybody else come around and tell me there was a CIO in there.

Q. Did you join any union when you went to work there?

A. I joined the AF of L after I was there for about, oh, I guess, two or three days.

Q. And did you have an AF of L button?

A. Yes.

Q. What did you do with it?

A. Wore it. I was a member of their union.

Q. Did you wear it in the plant while you were at work? A. Sure!

(Testimony of Rose Gilbert.)

Q. When were you discharged by the company?

A. I can't remember the date.

Q. Could it have been the 13th of September, 1945?

A. It might be that, or a little later. I know I didn't work there very long, not any longer than about two or three weeks, I don't think.

Q. Well, will you tell me the events leading up to your discharge? Did you have a conversation with anyone?

A. Yes, I had a conversation with that guy there in the maroon tie (indicating).

Mr. Edises: You mean Mr. Gleichman?

The Witness: I mean that guy in the red tie. He is no "Mr." to me. [547]

Trial Examiner Ruckel: Just answer the questions. Don't be impertinent. Answer the questions.

Mr. Rowell: Try to hold your temper with regard to Mr. Gleichman.

The Witness: Oh, him? I would like to slug——

Mr. Royster: Well, may the record show that the witness has identified Hack Gleichman as the person with whom she had a conversation?

Trial Examiner Ruckel: The witness has identified Mr. Gleichman.

The Witness: Well, he isn't the one that stopped us outside the gate that day. They stopped everybody going in the gate and asked them if they were a member, and I said, "No," so he told me to stand with another group. I don't know who the men

(Testimony of Rose Gilbert.)

were. And I did, and then another fellow came over and he said, "No, let her go through. I know she is a member of the AF of L, but she has been misled."

So he took down my name, and he wrote "misled" after it, and I went through and I went to work.

Not long after that Gleichman and that guy sitting alongside of him (indicating) came up to me one day and they asked me if I was a member of the CIO, and I said, "No," and he asked me if I was a member of the AF of L, and I said "Yes."

Trial Examiner Ruckel: Did he ask you to join the CIO? [548]

The Witness: Yes. And I told him that I was going to wait until the matters were settled there at the plant. He said as far as he was concerned that I was through working at Colgate-Peet's, and I told him I would come in, and I came in the next day. Then we went to Mr. Wood's office, and he talked to Mr. Wood, and I told Mr. Wood I would join the CIO if they gave me——

Mr. Wood: Speak louder.

The Witness: ——if they gave me the 15 days' notice that everyone else got that was a closed shop. And Gleichman said "No," and Mr. Wood himself turned around and asked Gleichman if I was fired or not.

Who does the firing? You or him?

Trial Examiner Ruckel: That may be stricken. I said, young lady, don't be impertinent on the

(Testimony of Rose Gilbert.)

witness stand. Any further questions of this witness?

Mr. Royster: None.

Mr. Hecht: I have none.

Trial Examiner Ruckel: Have you any further questions?

Mr. Royster: No further questions.

Trial Examiner Ruckel: On what theory is she in the complaint?

Mr. Royster: On the theory, in the first place, she was not notified that there was a closed shop contract existing there. [549]

Trial Examiner Ruckel: Well, that is up to the person that hires her, isn't it?

Mr. Royster: Yes, except the day she was discharged, and, further, there is a substantial question in my mind as to the right of a contracting union, when there is a controversy as to who is the bargaining agent for the employees, to force the employee to join any particular labor organization as a condition of employment.

Mr. Rowell: The question is whether the company has the right to comply with the requests of the contracting union in such a situation when they have been notified of the existence of a question concerning representation among their employees.

Trial Examiner Ruckel: You mean to say that the mere filing of a petition—the petition was filed in August?

Mr. Royster: The petition was filed in August. There had been a hearing on it.

(Testimony of Rose Gilbert.)

Trial Examiner Ruckel: Upholds the operation of the contract, therefore a union could file a petition every week or every month, that automatically would——

Mr. Royster: Not “automatically.” There is another question here, whether this girl was given a sufficient opportunity to join the ILWU.

Trial Examiner Ruckel: She said she was asked. It is quite obvious she never intended to, in fact, she practically [550] said she never intended to. That is the way I understood her testimony.

Now, you said you didn’t tell them you would join?

The Witness: Yes.

Trial Examiner Ruckel: Who did you tell that to?

The Witness: I told Mr. Wood and Mr. Gleichman.

Mr. Hecht: If they would give you 15 days?

The Witness: If they would give me the 15 days’ notice I would join the CIO.

Trial Examiner Ruckel: And what 15 days’ notice did you refer to?

The Witness: Well, the 15 days’ notice practically anybody gets when they go into a closed shop. You don’t have to join any union immediately.

Trial Examiner Ruckel: You didn’t refer to any particular 15 days’ notice, though?

The Witness: No, just a 15-day notice. And Mr. Wood asked Mr. Gleichman if it was all right, and Gleichman said “No.”

(Testimony of Rose Gilbert.)

Trial Examiner Ruckel: Any further questions?

Mr. Hecht: I have no questions except a motion to dismiss all charges brought on behalf of this complainant which, I think, should be granted at this point, Mr. Examiner.

Trial Examiner Ruckel: Motion allowed. [551]

You are excused.

(Witness excused.)

Mr. Royster: May we have a few minutes' recess right now? I believe that is all the witnesses I have, Mr. Examiner.

Trial Examiner Ruckel: Recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Does the Board have any further witnesses?

Mr. Royster: No further witnesses, Mr. Examiner. I do have a few more matters that I wish to bring up at this time.

The first is with respect to Board's Exhibit 6. The company has supplied me with a photostatic copy of the telegram which was sent by certain individuals as shown on Board's Exhibit 6, and the photostatic copy differs slightly from the copy of the telegram which is in evidence, and I will ask, if the parties will agree, that this photostatic copy may be submitted now for Board's Exhibit 6.

Mr. Hecht: No objection, Mr. Royster.

Mr. Rowell: No objection.

Trial Examiner Ruckel: Is there any objection, Mr. Edises?

Mr. Royster: Substituting this photostatic copy for the one already in evidence? [552]

Mr. Edises: None at all.

Mr. Royster: It is Board's 6.

Trial Examiner Ruckel: Motion allowed to substitute the document for the one now in evidence.

Mr. Royster: Oh, Mr. Examiner, around the 6th, 7th, or 8th of January, 1946, I requested Mr. Wood to supply me with a list of individuals who had been released from the employment of the company from and including July 30, 1945, to date. And in response to my request Mr. Wood sent me this list through the mail. Included on the list were the names of three individuals who are not named in the complaint, and lines have been drawn through those names.

I offer this list now in evidence.

Mr. Edises: May I see it, please?

Mr. Royster: Yes (handing document).

Trial Examiner Ruckel: With the exception of those names, then, those on the list are identical with those whose names appear in the complaint?

Mr. Royster: Yes.

Trial Examiner Ruckel: What is the purpose of the exhibit, then, Mr. Royster?

Mr. Royster: Well, it shows the period, the date of hiring of these employees, the date when the company's record shows that they were released, and the classification of employment they had with the company. [553]

Trial Examiner Ruckel: You mean it is a little more accurate than——

Mr. Royster: Well, possibly. It serves to expand the information concerning these employees slightly.

Mr. Rowell: In addition to that, Mr. Examiner, because of certain stipulations we haven't called all the witnesses so that there is no evidence in the record as to the fact they actually were discharged except on the basis of this document.

Trial Examiner Ruckel: It may be well to have this so there will be no question of the fact of the discharge.

Mr. Edises: This proposed exhibit, Mr. Examiner, has a heading, "Date released."

I presume that that refers to the date the company removed these people from employment?

Mr. Royster: It is the date they last worked, Mr. Edises.

Mr. Edises: The date they last worked.

Mr. Royster: Or, I think, more accurately the date for which they received pay.

Mr. Edises: Well, now, would you have any objection to substituting for this ambiguous word "released" the statement of fact that you have just given?

Mr. Royster: Not at all; no objection.

Mr. Edises: The date for which they were last paid? [554]

Mr. Royster: Correct.

Mr. Edises: May I have your permission to insert that on the document?

Mr. Royster: It may be changed physically.

Trial Examiner Ruckel: Any objection?

Mr. Rowell: No objection.

Mr. Hecht: No objection by respondent.

Mr. Royster: The date for which last paid.

Mr. Hecht: May I see that for a minute, please?

Mr. Royster: Yes (handing document).

Mr. Hecht (Examining document): No objection.

Trial Examiner Ruckel: What is the exhibit number on that?

The Reporter: Board's 15.

Trial Examiner Ruckel: Board's Exhibit 15 may be received.

(Thereupon the document above referred to was marked Board's Exhibit No. 15 and received in evidence.)

Mr. Royster: Yesterday afternoon, Mr. Examiner, Mr. Edises, counsel for the intervener, requested that I supply him with the dates when the individuals named in the complaint signed application for membership cards in the AF of L. I am now prepared to read that information into the record. [555]

Trial Examiner Ruckel: Go ahead.

Mr. Royster: Harry A. Smith, August 8, 1945; Calixto Rigo, August 6—all dates are 1945.

Mr. Hecht: I beg your pardon?

Mr. Royster: All dates are 1945.

Mr. Hecht: Yes.

Mr. Royster: Manuel Souza, August 8; Harold

Lonnberg, August 3; William Sherman, August 3; Thomas Azevedo, August 3; Martin Heppler, August 3; Sanford Moreau, August 8; Henry Geanarelli, August 3; Clyde Haynes, August 8; Glenn Hixson, August 3; Robert Ashworth, August 3; Ann Cerrato, August 3; Rose Marie Ros, August 3; Lincoln Olsen, August 3; Frank Marshall, August 8; Albert Zulaica, August 3; Vincent Barboni, August 3; Henry Hellbaum, August 6; Felix Denkowski, August 3; Harry Anderson, August 3; Dave Luchsinger, August 3; Sebastian Ramirez, August 3; Edwin H. Thompson, August 3; Genevieve Young, August 3; Kay Norris, August 3; Manuel Alegre, August 7; Manuel Munoz, August 3; Nick Tate, August 6; Catano Periera, August 6; Ina Mae Paige, August 4; Ophelia Reyes, August 6; John Puruca, August 7; Alden Lee, August 3; William Howard, August 3, and Frank Richmond, August 3.

Trial Examiner Ruckel: Anything further, Mr. Royster?

Mr. Royster: That is all for the Board.

Trial Examiner Ruckel: Any motions by any of the parties? [556]

Mr. Royster: No motions at this time.

Mr. Rowell: May it be understood, Mr. Examiner, that the closing of the Board's case does not preclude the charging union from calling a witness or two if it feels so advised?

Mr. Hecht: Oh, no. The Board rests now, I think.

Trial Examiner Ruckel: It is your turn now if you want to call any witnesses.

Mr. Rowell: I mean on the matter of rebuttal, if necessary.

Mr. Edises: Well, Mr. Examiner, I submit that that is entirely a different matter, but as far as the Board's case is concerned, I presume that the charging union has no separate case, and I think we are entitled to know whether they are resting or not?

Trial Examiner Ruckel: Well, you don't intend to adduce any testimony other than what the Board has adduced?

Mr. Rowell: No, only on the matter of rebuttal, possibly.

Trial Examiner Ruckel: Well, the Board can call its own rebuttal witnesses, if you will furnish them to the Board.

Mr. Rowell: I will do that.

Mr. Hecht: Mr. Examiner, there are certain obvious [557] matters I would like to make certain motions to dismiss at this point.

Calling your attention to Paragraph 5, Subdivision 2 of the complaint—ready, Mr. Royster?

Mr. Royster: Yes.

Mr. Hecht: I move to dismiss the following charge, Mr. Examiner, that of "Removing literature, posters, and notices of the Union from respondent's bulletin boards in the plant, while not disturbing literature, posters, and notices of the ILWU on the same boards."

I submit there is absolutely no evidence on that point.

Trial Examiner Ruckel: Do you recall any?

Mr. Royster: I recall no evidence on that point, Mr. Examiner.

Trial Examiner Ruckel: Does anybody else recall any?

Mr. Edises: I join in that motion.

Trial Examiner Ruckel: Motion allowed.

Mr. Hecht: Referring also to Subdivision 4 of the same paragraph, the charge "Permitting the ILWU to publish on respondent's bulletin boards, statements that the union members, supporters, or adherents would be discharged."

Mr. Royster: Certainly there was evidence as to that. I will oppose the motion.

Trial Examiner Ruckel: There was some evidence that the notice which warned employees not to attend that meeting [558] was posted on some of the bulletin boards, I believe.

Mr. Royster: There was also evidence that another notice was——

Mr. Hecht (interposing): I mean, if the Examiner will note that the charge is that the respondent, through its officers, agents, and employees—did those things.

Trial Examiner Ruckel: Yes, I know. Motion denied.

Mr. Hecht: Very well.

Directing your attention to Subdivision 3, "Refusing union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours."

The Examiner will recall that the only evidence

mony was to this effect: that the meeting of July 30 was an open meeting, it was an organizational meeting. As a matter of fact, it was not an AF of L meeting, and that all employees were invited to attend, but there is certainly no evidence [561] that the meetings after that were open meetings.

Trial Examiner Ruckel: I don't think there is any evidence of surveillance. Motion allowed to dismiss.

Mr. Hecht: Now, going back to Subdivision 1 of Paragraph V, may it please the Examiner, with reference to the first nine men removed from their employment, there is no evidence whatsoever that on July 30 and 31 the company had any knowledge of the reasons behind the removal from good standing of these men. Whatever may be said as to the company's refusal to reemploy them is, perhaps, still subject to argument, but I think there is no argument whatever on the question that the company did not discharge or threaten to discharge these men, that is, the first nine, because of any activity on behalf of the AF of L.

I think the record is clear as it can possibly be, it is proved beyond a demonstration by the very witnesses put on the stand by Mr. Royster.

Mr. Royster: Well, assuming that what Mr. Hecht says is true, I don't see that that is any grounds for requesting the dismissal of Paragraph 1 of Paragraph V.

Mr. Rowell: Furthermore, the case isn't closed yet. It would be quite inappropriate to grant such

a motion. In the first place, there is no evidence tending to indicate the company had knowledge——

Trial Examiner Ruckel: The case is closed as far as [562] the Board is concerned.

Mr. Rowell: I know, but if the evidence comes in as a result of the company's case, it is possible they might prove our case. Furthermore,——

Trial Examiner Ruckel: You can't depend on any such technique as that unless you get some evidence of your own case in.

Mr. Rowell: I never heard of such a motion being granted at this time when the case is not completed.

Trial Examiner Ruckel: Well, I certainly would grant the motion if I were of the opinion there was no evidence whatsoever, just in the hope that maybe some evidence might crop up during the respondent's case. I do, however, think that there is some evidence and I am going to deny the motion.

Mr. Hecht: 2 and 5 are granted then, Mr. Examiner?

Trial Examiner Ruckel: Sir?

Mr. Hecht: Subdivisions 2 and 5, the motions with respect to Subdivisions 2 and 5 are granted?

Trial Examiner Ruckel: That is right, 2 and 5.

Mr. Hecht: I will reserve further motions until the close of our case, Mr. Examiner.

Trial Examiner Ruckel: All right, sir.

Mr. Edises: Mr. Examiner, on behalf of the Intervener, I wish to move the dismissal of the complaint in so far as it charges the discriminatory discharge of the individual [563] complainants on the

ground that the evidence shows that there was at the time these alleged discharges took place a valid closed shop agreement with the ILWU.

Trial Examiner Ruckel: This isn't going to be extended, is it?

Mr. Edises: Oh, no. It will be very short.

The validity of the contract is not questioned, and I merely want to call to the attention of the Trial Examiner the fact that although the Board has indicated a disposition to protect employees from discharge under closed shop agreements at a time when a question of representation is open, it has never gone so far as to hold the employees who by their own action have withdrawn from the contracting union and thereby put themselves completely beyond the scope of the contract are entitled to such protection. The only cases which the Board has so far dealt with this question are ones in which the employees have remained in the contracting organization at the same time that they organized and became members of the rival labor organization.

Trial Examiner Ruckel: Does that complete the motion?

Mr. Edises: That part of it.

Trial Examiner: You are asking that the complaint be dismissed?

Mr. Edises: I have an additional motion. [564]

Trial Examiner Ruckel: Go ahead.

Mr. Edises: Do you wish me to proceed with that?

Trial Examiner Ruckel: Go ahead.

Mr. Edises: My second motion is that the com-

plaint be dismissed, and in the alternative that the Trial Examiner rule that these employees have placed themselves outside the scope of the Board's remedial action by reason of the fact that they participated against the will of the union to which they belonged in an unauthorized strike during wartime, thereby not only dishonoring the pledge that their labor organization and the labor movement generally had made against wartime strikes, but at the same time—well, I will withdraw that second ground—that it was in violation of the wartime no-strike pledge, that it was conduct of a kind which brings itself within the scope of appropriate discretionary action by the Trial Examiner, even if it were assumed that a case of violation of Section 8(3) of the Act had been established.

Trial Examiner Ruckel: Motion to dismiss on the grounds stated denied.

Any further motions? (No response.)

Call the first witness for the Respondent.

Mr. Hecht: Mr. Clifford A. Altman.

CLIFFORD A. ALTMAN

called as a witness on behalf of Colgate-Palmolive-Peet [565] Company, being first duly sworn, was examined and testified as follows:

(Testimony of Clifford A. Altman.)

Direct Examination

By Mr. Hecht:

Q. Will you state your name for the record, Mr. Altman? A. Clifford A. Altman.

Q. What is your business or occupation?

A. I am the Superintendent of the Colgate-Palmolive-Peet Plant in Berkeley.

Q. Will you keep your voice up, Mr. Altman?

A. Yes, sir.

Q. How long have you been employed by the Respondent? A. I am in the 30th year.

Q. And what is your present position?

A. My present position?

Q. Yes. A. Superintendent.

Q. Yes. And were you the Superintendent on July 26, 1945? A. Yes, sir.

Q. That day was a Saturday, was it not, July 26? Do you recall?

Mr. Royster: It was a Thursday. I will help you out a little bit.

Mr. Hecht: O, pardon me.

Let me lead the witness to save a little time, Mr. [566] Royster.

Mr. Royster: To a certain extent.

Q. (By Mr. Hecht): Were you aware of a supper meeting that certain employees of the Respondent held on July 26, 1945? A. No, sir.

Q. When, if ever, did you hear of that meeting?

A. I never heard of it until somebody mentioned it a few days ago.

